

IN THE COURT OF APPEALS OF THE STATE OF OREGON

TREVOR DEHART, BRIAN  
SHANNON, and DAVE BROWN,

Plaintiffs-Respondents,

and

RENEE POWELL,

Plaintiff,

v.

DEBBIE TOFTE, AJ SCHWANZ,  
and TAMARA BROOKFIELD,

Defendants-Appellants,

and

KATHERINE BARNETT,

Defendant.

Court of Appeals No. A177995

Yamhill County Circuit Court

No. 21YAM0001CV

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**APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD**

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Appeal from the Limited Judgment entered on February 11, 2022  
By the Honorable Jennifer K. Chapman, Yamhill County Circuit Court Judge

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2. Whether plaintiffs, who are publicly elected officials, can meet their *prima facie* burden under the Doxxing Statute, ORS 30.835, of demonstrating that defendants "knowingly caused [plaintiffs'] personal information to be disclosed" when defendants at most simply reposted information lawfully obtained from publicly available sources.

3. Whether plaintiffs can meet their *prima facie* burden under the Doxxing Statute, ORS 30.835, of demonstrating that defendants knew or reasonably should have known that plaintiffs – publicly elected officials – did not consent to the disclosure of information related to their outside employment when plaintiffs made no effort to keep the information private and the information was widely publicly available.

4. Whether plaintiffs can meet their *prima facie* burden under the Doxxing Statute, ORS 30.835, of demonstrating that reasonable persons in plaintiffs' positions – public officials – would be harassed by the disclosures, when the information was already in the public sphere, and plaintiffs only claimed stress and anxiety in their homes and places of public, which had no nexus to their places of employment.

5. Whether, the Doxxing Statute, ORS 30.835, as applied to defendants, who were engaged in core political speech, violates Article I, section 8 of the Oregon Constitution and/or the First Amendment of the United States Constitution.

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## APPELLANT'S OPENING BRIEF

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### STATEMENT OF THE CASE

#### **Nature of the Proceeding and Relief Sought**

Plaintiffs bring this action under Oregon's newly enacted anti-doxxing statute, ORS 30.835 (the "Doxxing Statute"). (ER 1-7.) Plaintiffs – elected officials who collectively comprised a majority of the Newberg School Board – alleged that defendants – teachers and parents in the Newberg School District – unlawfully disclosed their personal information with the intent to harass plaintiffs. (*Id.*; ER 52, 74, 87, 118.)

Defendants moved to strike plaintiffs' complaint under ORS 31.150, Oregon's anti-SLAPP (Strategic Lawsuits Against Public Participation) statute. Def. Katherine Barnett's Special Mtn. to Strike, TCF Oct 18, 2021; Def. Tamara Brookfield's Special Mtn. to Strike, TCF Nov. 1, 2021, Def. Debbie Tofte's Special Motion to Strike, TCF Nov. 1, 2021; Def. Aj Schwanz's Special Mtn to Strike, TCF Nov. 2, 2021 (collectively "Def. Mtns. to Strike").<sup>1</sup> The trial court denied defendants' motions and entered a limited judgment pursuant to ORS 31.150(1). (ER 283-294.). Defendants seek reversal of the limited judgment and

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<sup>1</sup> Although defendant Barnett is not an appellant, all defendants joined in her motion to strike. Therefore, the arguments made in her motion to strike are relevant for preservation purposes on appeal.



remand with instructions to enter an order granting defendants' special motions to strike.

### **Nature of the Judgment**

The trial court entered a limited judgment pursuant to ORS 31.150(1) on February 11, 2022. (ER 293-94.)

### **Appellate Jurisdiction**

The Court of Appeals has jurisdiction over this matter pursuant to ORS 2.516, and ORS 19.205(1).

### **Effective Date for Appellate Jurisdiction**

The notice of appeal was filed on February 15, 2022. A corrected notice of appeal was filed on March 18, 2022. Both notices were filed within thirty days from the date the limited judgment was entered. The notices of appeal timely were filed pursuant to ORS 19.255.

### **Questions Presented**

1. Whether, for purposes of the anti-SLAPP statute under ORS 31.150(2)(d), community discussions about elected officials' outside employment in the broader context of political debate about the officials' controversial votes on district-wide policies of widespread interest is "conduct in furtherance of the constitutional right of free speech on a public issue or an issue of public interest."

2. Whether plaintiffs, who are publicly elected officials, can meet their *prima facie* burden under the Doxxing Statute, ORS 30.835, of demonstrating that defendants "knowingly caused [plaintiffs'] personal information to be disclosed" when defendants at most simply reposted information lawfully obtained from publicly available sources.

3. Whether plaintiffs can meet their *prima facie* burden under the Doxxing Statute, ORS 30.835, of demonstrating that defendants knew or reasonably should have known that plaintiffs – publicly elected officials – did not consent to the disclosure of information related to their outside employment when plaintiffs made no effort to keep the information private and the information was widely publicly available.

4. Whether plaintiffs can meet their *prima facie* burden under the Doxxing Statute, ORS 30.835, of demonstrating that reasonable persons in plaintiffs' positions – public officials – would be harassed by the disclosures, when the information was already in the public sphere, and plaintiffs only claimed stress and anxiety in their homes and places of public, which had no nexus to their places of employment.

5. Whether, the Doxxing Statute, ORS 30.835, as applied to defendants, who were engaged in core political speech, violates Article I,

section 8 of the Oregon Constitution and/or the First Amendment of the United States Constitution.

### **Summary of Argument**

The trial court erred in denying defendants' special motions to strike. First, the court erred in determining that plaintiffs' action against defendants Tofte and Brookfield fell outside the scope of Oregon's anti-SLAPP statute, ORS 31.150(2). To the contrary, both Tofte and Brookfield's alleged disclosures constituted conduct in furtherance of their constitutionally protected free speech rights in connection with a public issue or a matter of public interest – namely, their political protest against the Newberg School Board's controversial ban on educators displaying symbols of support for Black Lives Matter and the LGBTQ+ community. ORS 31.150(2)(d).

Second, while the trial court agreed that plaintiffs' action against defendant Schwanz was subject to the anti-SLAPP statute, the court erred in finding that plaintiffs had produced *prima facie* evidence of each element of the Doxxing Statute, ORS 30.835. In fact, plaintiffs cannot establish a *prima facie* case against *any* defendants, because there is insufficient evidence that (1) defendants "knowingly caused personal information to be disclosed" as required under ORS 30.835(2)(a); rather, that information already had been disclosed by defendants and their employers and defendants simply republished publicly

available information; (2) defendants or any reasonable person would have known that plaintiffs "did not consent to the disclosure" of the information in question, ORS 30.835(2)(b), because the information was already in the public sphere and there was no evidence that plaintiffs had made any effort to keep it private; and (3) any "reasonable person" in plaintiffs' positions – public officials – would be harassed and suffer "severe emotional distress," ORS 30.835(2)(d), by the simple reposting of information already in the public domain.

Third and finally, if the statute is construed so broadly as to apply to defendants' conduct, it violates defendants' free speech rights under Article I, Section 8 of the Oregon Constitution and the First Amendment to the United States Constitution. Application of the Doxxing Statute would chill core political speech critical to the public debate and the state has no legitimate interest in regulating truthful information in the public domain that is lawfully obtained.

## **Statement of Facts**

### *A. Introduction*

Plaintiffs are elected public officials, Directors of the Newberg School Board (the Board). (ER 2.) Plaintiffs constitute three of the four Directors that voted in favor of and passed a Board policy that banned educators within the district from displaying symbols of support for Black Lives Matter (BLM) and

the LGBTQ+ community (the ban). (ER 126.)<sup>2</sup> The ban garnered significant public criticism, both locally and nationally. (ER 29-39, 90.)

Defendants are plaintiffs' constituents: teachers, parents, and voters in the Newberg School District (NSD). (ER 52, 74-75, 87-88.) They were all members of a Facebook group called Newberg Equity in Education ("NEEd"). (*Id.*) During the relevant timeframe, NEEd had nearly 650 members from the Newberg community. (ER 138.) After plaintiffs voted to enact the ban, defendants participated in extensive criticism of plaintiffs' votes in the NEEd group. (ER 53, 75, 88-91.) As part of and in furtherance of those discussions, they reposted information about plaintiffs' outside employment, which defendants obtained from publicly available sources, including plaintiffs' campaign materials, their LinkedIn pages, their employers' websites, and other publicly available sources. (ER 11-12, 53-55, 76-77, 91-94, 138.) Despite plaintiffs' status as public officials and that all the information was in the public domain, plaintiffs allege that defendants' disclosure of their personal information caused plaintiffs severe emotional distress and violated the Doxxing Statute, ORS 30.835. (ER 4-6.) That statute makes unlawful the

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<sup>2</sup> Plaintiff Powell, who dismissed her claim and is not a respondent on appeal, is the fourth member that voted in favor of the policy. (ER 126, 284.)

disclosure of "private information" if the plaintiff establishes by a preponderance of the evidence that:

"(a) The defendant, with the intent to \* \* \* harass \* \* \* knowingly caused personal information to be disclosed;

"(b) The defendant knew or reasonably should have known that the plaintiff did not consent to the disclosure;

"(c) The plaintiff is \* \* \* harassed; and

"(d) A reasonable person would be \* \* \* harassed \* \* \* by the disclosure."

ORS 30.835(2). "Personal information" includes "[c]ontact information for the plaintiff's employer." ORS 30.835(1)(d).

*B. The Board bans student and teacher speech about BLM and LGBTQ+ Pride, garnering massive public outcry.*

During the 2021-2022 academic year, each plaintiff served as a Director of the Board, with Director Brown as Board Chair and Director Shannon as Vice-Chair. (ER 107–09.) In July of 2021, Vice-Chair Shannon moved to ban all displays of support for BLM and LGBTQ+ Pride in the NSD. (ER 115.) After some discussion, the Board voted to table Shannon's motion for public comment. (ER 115–16.) In the month that followed, Shannon's proposal sparked significant local and national news coverage and galvanized Newberg community members to hold weekly protests. (ER 29–39, 90.) Some 500 parents, students, teachers, and community members wrote to the Board about

Shannon's proposal. (ER 122.) Around 100 of them made public comments. (ER 118–123.) In the end, in August 2021, each plaintiff voted in support of Shannon's proposal, and the motion passed to remove all BLM displays and Pride Flags from the NSD. (ER 126.)

*C. Hundreds of parents and teachers organize in NEEd.*

In the Summer of 2020, some Newberg parents worked to organize the NEEd Facebook group. (ER 89, 154.) The purpose of NEEd is to connect parents, teachers, and community members who believe that education must be equitable and serve students of all backgrounds and learning needs. (ER 89.) NEEd evolved primarily into a grassroots community effort to oppose the ban and the Directors who voted for it. (ER 75.) Each defendant used NEEd to voice their concerns about the actions of the Board, including their votes in favor of the ban. (ER 53, 75, 89.)

*D. Defendant Schwanz's Conduct in Furtherance of Free Speech Related to Chair Brown*

Defendant Schwanz and her husband have lived in the Newberg community for approximately 20 years, and they have three children who attend Newberg public schools. (ER 87.) Schwanz volunteers much of her time to improve the Newberg public school system. (ER 87–88.) For example, she has served on the district's Budget Committee and several hiring committees, played a central role in passing a \$141 million bond to improve the district's

buildings, and is a parent representative on the Newberg High Site Council and Design Team to help implement the school's bond improvements. (ER 88.)

Aside from her direct contributions to Newberg schools, Schwanz is a co-administrator of NEED. (ER 89.) In that role, she encourages others to be informed about the Board's policies and decision making. (ER 89–90.) Before plaintiffs filed this action against her, Schwanz was one of the most prolific posters in NEED. (*Id.*) She routinely shared newspaper articles about equity in education and Newberg school affairs; Board agendas, meeting dates, and how to attend or submit comments to the Board; school policies and procedures; and diversity, equity, and inclusion resources. (*Id.*)

Plaintiffs' action against Schwanz arises out of posts she made related to Chair Brown. (ER 3.) Before Chair Brown was elected to the Board, he was the head boys' tennis coach at Newberg High. (ER 90–91.) When he campaigned for his seat on the Board, he touted his years of experience at Newberg High as something that uniquely qualified him to become a Director. (ER 93, 135.)

It was well known in the community that, by operation of Board policy, Brown had to resign his role at Newberg High once elected to the Board. (ER 93.) Brown announced at a Board meeting that he found employment as head coach of the Canby High Girls' Tennis Program. (ER 92-93.) He also advertised that fact during a 2020 interview with the *Canby Herald*. (ER 129-31.)



Not long after Brown supported the ban, a former Newberg High student retweeted on Twitter the student's own posts from earlier that year about negative interactions the student had with Brown when Brown was a tennis coach there. (ER 90–91, 128.) A NEEd member reposted those tweets in the NEEd group. (ER 90–91.) The student wrote about three experiences:

"[Brown] had us throwing basketballs at each other in a varsity practice and called that shit 'Chinese Prison Dodgeball.' Like with Trump, the racism and stupidity were in constant competition."

"Not to mention the time that he came up to me and another one of his tennis players during his time as a school security guard. Got a call about someone acting up, didn't know who it was, so he joked to us that it was probably a Mexican kid. \* \* \*."

"Or the time he chuckled after his assistant coach said 'We've got a bunch of faggots on this team' in front of one of the few openly gay kids at the school in a conservative town. Dave \* \* \* Brown should not come close to Newberg Schools or anything to do with them."

(ER 128.) The student's parent disclosed to NEEd that the student had never lodged a complaint against Brown because the student was afraid to do so. (ER 90–91.)

When Schwanz saw the student's allegations, she grew concerned because she knew that Brown was coaching students at Canby High. (ER 91.) Schwanz therefore sought to support students in reporting similar incidents. (ER 93–94). She posted to NEEd: "If you know of students who have been coached

by Chair Brown, please encourage them to share their stories/concerns with the Canby Athletic Director" and she provided the name, phone number, and email for the Canby Athletic Director, Benjamin Winegar. (ER 138). With her post, she shared two links. (*Id.*) One was to the *Canby Herald* article in which Brown talked about his new coaching position at Canby High. (*Id.*) The second was to the Oregon School Activities Association webpage for Canby High. (*Id.*) That webpage publicly provided the contact information for Athletic Director Winegar. (ER 92.) Schwanz herself did not contact Winegar following her post, because neither she nor her children had any direct experience with Brown in his capacity as a tennis coach and had nothing to report. (ER 94.)

*E. Defendant Brookfield's Conduct in Furtherance of Free Speech Related to Vice Chair Shannon*

Defendant Brookfield's two children go to Newberg public schools. (ER 52.) In the wake of the Board's enactment of the ban, Brookfield joined NEED. (ER 53.) There, she discussed with NEED members ways to respond to the new ban, as well as to support students and teachers harmed by it. (ER 53, 55.) A week after the policy was enacted, another member of NEED posted that Vice Chair Shannon worked at a local tech company, Selectron Technologies. (ER 53.) The group member found that information through Shannon's own website, <http://votebrianshannon.com>, where he publicly touted his employment as part of his successful Board campaign. (*Id.*) "Today, I am a Senior Project Manager

at Selectron Technologies," he wrote, "where I work to implement software solutions that provide citizens better access to their local and state governments." (*Id.*)

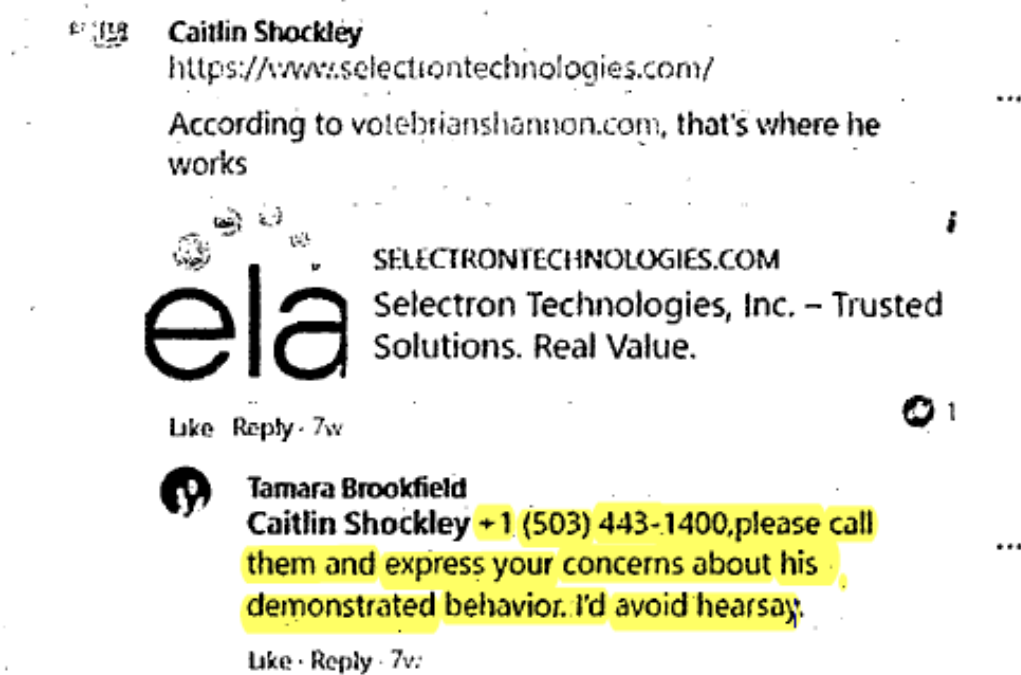
After Brookfield saw that post, she searched for "Selectron Technologies" on Google. (ER 53.) Google search results often include a "knowledge panel" in the top right that collates publicly available information about the subject of the search. When Brookfield searched for "Selectron Technologies," this is what she saw:



(ER 53–54.)

Selectron's phone number was immediately visible in the knowledge panel at the top of the page. (*Id.*) Knowing that Shannon had campaigned in part on the strength of Selectron's good name, Brookfield wondered whether the company was aware of Shannon's policy decisions and "of the public discussion of which they had become a part." (ER 54.) She copied and pasted the Google

search results into NEED, suggested that people call and "express [their] concerns" about Shannon's "demonstrated behavior," asked that they "avoid hearsay," and hit "Send." (ER 12, 54.) This was her post:



(ER 12.) Brookfield hoped that Selectron might offer Shannon equal-opportunity training if made aware of his discriminatory policy positions and wanted to afford the company an opportunity to join the public debate in which their name had arisen. (ER 54.)

*F. Defendant Tofte's Conduct in Furtherance of Free Speech Related to Director DeHart*

Defendant Tofte is a sixth-grade humanities and drama teacher in the NSD. (ER 74.) Following enactment of the ban, Tofte's son, a senior at Newberg High, came home from school distraught because his friends who are

part of the LGBTQ+ and BIPOC communities expressed to him that the ban made them feel as though they did not matter. (ER 75.) Tofte felt called to support students like her son's friends and oppose the ban. (*Id.*) In an effort to do so, she joined NEED. (*Id.*)

As with Defendants Schwanz and Brookfield, Tofte participated in discussions in NEED centered on opposition to the ban, including how to appear at school board meetings and how to get involved in community protesting. (ER 75–76.) She also participated in discussions and debate within NEED about the best public messaging related to opposing the ban. (ER 75.) Tofte always voiced her concerns as a private citizen. (*Id.*)

Within a week of the ban going into place, another person began a discussion thread on NEED regarding possibly boycotting or avoiding supporting businesses that employed the Directors who voted in support of the ban. (ER 75–76.) Tofte previously had learned from another thread on NEED that DeHart worked at Lam Research. (ER 76.) She looked up Lam Research on Google and found its publicly available website, including a page describing the company's "Core Values," which included "Inclusion & diversity," and "Mutual trust & respect." (*Id.*)

Within the "boycott" discussion, Tofte decided to share this publicly available information with other group members. Tofte posted the link to Lam Research's publicly available website and outlined the "Core Values" listed on its website. (ER 79.) She shared her opinion that the Core Values "seriously conflict" with DeHart's behavior in passing the ban and stated that "someone should point these Core Values out to [DeHart]." (*Id.*) Tofte did not share any contact information for Lam Research, nor did she encourage anyone to contact them. (*Id.*)

Most group members participating in the "boycott" discussion commented that they did not want anyone to be fired from their jobs. (ER 75–76, 80.) Tofte agreed: "I don't want anyone to get fired, but I would like to see them held accountable for their actions." (*Id.*) By "accountable," Tofte meant that she wanted the board members who voted for the ban to change their minds on the NSD ban. (ER 75-76.)

*G. Procedural History.*

Plaintiffs brought this action alleging that defendants disclosed personal information about plaintiffs with the intent to harass them in violation of Oregon's Doxxing Statute, ORS 30.835. (ER 4-6.) Defendants moved to strike the complaint pursuant to the anti-SLAPP statute, *ORS 31.150*. Def. Mtns. Strike. The trial court denied their motions, holding that defendants Tofte and

Brookfield failed to establish that the anti-SLAPP statute applied to plaintiffs' action, reasoning that "it is unclear from the record why [the private employment] of the Directors or the values of those private entities would be a matter of public interest." (ER 290.) The trial court held that

"neither defendant was questioning the technical qualifications of Plaintiffs DeHart and [Shannon] to serve on the school board; the record does not indicate that Defendants' posts contributed to a conversation about whether DeHart and [Shannon] were technically qualified for their public positions; and the posts do not suggest that DeHart and [Shannon]'s employment influenced the controversial decisions they made. Instead, it appears that Defendants' posts were for the purpose of furthering a conversation about how to 'hold them accountable' for their decisions."

(ER 290).<sup>3</sup> The trial court explained that "there are many situations in which the private employment of a public servant can be deemed a matter of public interest. Unfortunately, on this record, Defendants Tofte and Brookfield have failed to establish that nexus here \* \* \*." (*Id.*)

As to defendant Schwanz, the trial court held that her posts regarding Chair Brown did implicate matters of public interest because Director Brown was employed by a public school as a coach and defendant Schwanz sought to have students share their stories and experiences about Director Brown in that

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<sup>3</sup> The trial court repeatedly mentions plaintiff Brown in her reasoning but that appears to be a typo as the discussion should have been referencing plaintiff Shannon in reference to defendant Brookfield.

capacity. (ER 290). "The post's connection to public school and to public school students clearly implicates matters of public interest." (*Id.*) The trial court also concluded that her post "clearly involves conduct in furtherance of protected speech" under ORS 31.150(2)(d). (ER 291). Nevertheless, the trial court held that plaintiffs had met their burden to establish a *prima facie* case against Schwanz, reasoning that she "knowingly disclosed the contact information for Plaintiff Brown's boss, which led to Plaintiff Brown being stalked, harassed, or injured." (*Id.*)

The trial court also rejected defendants' argument that the Doxxing Statute was unconstitutional. (ER 292). The trial court had "some questions about the overall constitutionality" of the Doxxing Statute, both as applied and generally. (*Id.*) Nonetheless, the trial court "presumed – without deciding – the constitutionality of [the Doxxing Statute]." (*Id.*)

The trial court therefore denied defendants' anti-SLAPP motions and entered a limited judgment pursuant to ORS 31.150(1). (ER 292–93).

### **ASSIGNMENT OF ERROR**

The trial court erred in denying defendants' special motions to strike pursuant to ORS 31.150.



## **Preservation of Error**

Defendants filed special motions to strike pursuant to Oregon's anti-SLAPP statute, ORS 31.150. Def. Mtns. to Strike. Defendants argued that the anti-SLAPP statute applied because plaintiffs' civil action arose from conduct in furtherance of defendants' exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest pursuant to ORS 31.150(2)(d). Def. Mtns. to Strike; Reply in Supp. of Special Mtn. to Strike, TCF Nov. 26, 2021 ("Def. Reply"); (ER 176-212, 231-234.) In turn, defendants contended that plaintiffs failed to meet their burden to produce substantial evidence to support a prima facie case under the Doxxing Statute, ORS 30.835. Def. Mtns. to Strike; Def. Reply; (ER 236-248, 267-74.) Defendants also argued that if Oregon's Doxxing Statute were construed in a manner to apply to defendants' protected expression, it would violate their rights to free speech under Article I, Section 8 of the Oregon Constitution, and the First Amendment of the Federal Constitution. (ER 14-16, 249-51, 269, 274-75.) The trial court rejected those arguments and denied the special motions to strike. (ER 284-92).

## **Standard of Review**

This Court reviews the trial court's denial of special motions to strike for legal error. *Plotkin v. State Accident Ins. Fund*, 280 Or App 812, 815, 385 P3d 1167 (2016), *rev den*, 360 Or 851 (2017). This Court takes the facts from the

pleadings and from the supporting and opposing affidavits submitted to the trial court, ORS 31.150(4), and views them in the light most favorable to the plaintiffs. *Mullen v. Meredith Corp.*, 271 Or App 698, 702, 353 P3d 598 (2015).

## ARGUMENT

The anti-SLAPP statute, ORS 31.150, provides a mechanism for a defendant who is sued "over certain actions in the public arena to have a questionable case dismissed at an early stage." *Yes on 24-367 Comm. v. Deaton*, 276 Or App 347, 350, 367 P3d 937 (2016). When a defendant files a special motion to strike under ORS 31.150, the trial court must apply a two-step burden-shifting process. First, the court must determine whether the defendant has met its burden of showing that the claim arises out of statements or conduct protected by ORS 31.150(2). *Wingard v. Oregon Family Council, Inc.*, 290 Or App 518, 521-522, 417 P3d 545, *rev den*, 363 Or 119 (2018). Second, if the defendant meets its burden, the burden shifts to the plaintiff "to establish that there is a probability that the plaintiff will prevail on the claim presenting substantial evidence to support a prima facie case." *Id.* "Prima facie" means that a plaintiff "must submit sufficient evidence from which a reasonable trier of fact could find that the plaintiff met its burden of production." *Handy v. Lane Cty.*, 360 Or 605, 622-23, 385 P2d 1016 (2016).

**I. The Anti-SLAPP Statute Applies Because Plaintiffs' Civil Action Against Tofte and Brookfield Arises out of Conduct in Furtherance of Defendants' Constitutional Right of Free Speech in Connection with a Public Issue or an Issue of Public Interest.**

A special motion to strike may be made against any claim in a civil action that arises out of:

"Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

ORS 31.150(2)(d).

The trial court determined that defendants Tofte and Brookfield failed to meet their burden to establish that plaintiffs' actions arose out ORS 31.150(2). (ER 289-90). As explained below, the trial court erred.

**A. Plaintiffs' civil action arises out of conduct in furtherance of defendants' constitutional right of free speech.**

ORS 31.150(2)(d), by its plain terms, includes not merely actual exercises of free speech rights, but also conduct that furthers such rights. ORS 31.150(2)(d); *see also Hilton v. Hallmark Cards*, 599 F3d 894, 903 (9th Cir 2010). An act is in furtherance of the right of free speech if the act helps to advance or assists in the exercise of that right. *See Hunter v. CBS Broad., Inc.*,

165 Cal Rptr 3d 123, 131 (Cal Ct App 2013).<sup>4</sup> Such conduct need not to be *necessary* to the free speech rights to be in furtherance of those rights. *Mullen*, 271 Or App at 706. Plaintiffs did not dispute below that their lawsuit arose out of conduct in furtherance of defendants' constitutional rights of free speech. (ER 222-230); Pl. Jt. Resp. to Def.'s Mts. to strike and Dismiss Compl., TCF Nov. 15, 2021. Nor could they.

Defendants were engaged in conduct in furtherance of their "core political speech" because they were involved in "interactive communication concerning political change." *Meyer v. Grant*, 486 US 414, 421-22 (1988). This country has a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times v. Sullivan*, 376 US 254, 270 (1964). Expressions of grievance and protest regarding political issues clearly qualify for constitutional protection. *Id.* at 271. "Preserving the integrity of the electoral process, preventing corruption, and sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of

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<sup>4</sup> Because Oregon "modeled its anti-SLAPP statute on California's," California anti-SLAPP cases from 2001 or earlier are binding authority in Oregon, and later cases retain persuasive value. *Handy*, 360 Or at 618, 623 & n 12.

government are interests of the highest importance." *First Nat. Bank of Boston v. Bellotti*, 435 US 765, 788-89 (1978). "The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. U.S.*, 354 US 476, 484 (1957).

Here, defendants' posting of information related to plaintiffs' outside employment was to further their political debate and protest of plaintiffs and their votes in favor of the ban. Brookfield posted the information so that people could "express their concerns about [Shannon]'s demonstrated behavior" related to how his policies were harming marginalized members of the Newberg community. (ER 12, 54-55). Tofte posted the information in the context of a conversation about boycotting employers of the Directors that voted in favor of the ban and also so community members could communicate to their elected official – *DeHart himself* -- that his vote on the ban did not align with the values of his employer. (ER 76-81.)<sup>5</sup>

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<sup>5</sup> Plaintiffs conceded at the hearing that "identifying an employer for the purposes of perhaps boycotting that business \* \* \* would be protected conduct." (ER 256).

Defendants Tofte and Brookfield's conduct helped to advance or assist in their political debate and protest efforts and therefore constituted conduct in furtherance of their protected free speech rights.

**B. Defendants' statements were made in connection with a public issue or an issue of public interest.**

*1. Plaintiffs' passage of the ban was a public issue or an issue of public interest.*

In *Neumann v. Liles*, 295 Or App 340, 345, 434 P3d 438 (2018), *rev den*, 365 Or 195 (2019), this Court determined that the statutory term "issue of public interest" for purposes of ORS 31.150(2)(d) was intended to have its common-sense meaning – "one that is of interest to the public." Government actions, in particular, are inherently public issues. *Damon v. Ocean Hills Journalism Club*, 85 Cal App 4th 468, 479 (2000); *Cf. Snyder v. Phelps*, 562 US 443, 453 (2011) (issue is a matter of public concern "when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." (quotation marks omitted)). So are "person[s] or entit[ies] in the public eye" whose actions are "a topic of widespread public interest." *Wilbanks v. Wolk*, 121 Cal App 4th 883, 898 (2004).

Plaintiffs' votes to pass the ban garnered significant media attention, both locally and nationally. (ER 29-37, 43-48). The ban generated significant discussion in the NEEd group. (ER 75, 78-81.) It was evidently of great "concern to the community." *Snyder*, 562 US at 453; *see also Tokarski v. Wildfang*, 313 Or App 19, 24-25, 496 P3d 22, *rev den*, 368 Or 788 (2021) (matter was an issue of public interest when "of great public interest in the Salem community"). The Board members, including plaintiffs, who voted for it were "in the public eye" and their votes were "of widespread interest." *See Wilbanks*, 121 Cal App 4th at 898. Community discussions related to the ban therefore were quintessentially matters of public interest.<sup>6</sup>

2. *Defendants Tofte and Brookfield's statements were made in connection with the broader public debate related to the ban.*

ORS 31.150(2)(b) merely requires that the conduct be *in connection with* a public issue or an issue of public interest – the conduct need not, considered in isolation, be itself an issue of public interest.

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<sup>6</sup> Plaintiffs conceded that "the bulk of [Defendants'] comments \* \* \* clearly *do* touch on issues of public interest." Pl. Jt. Resp to Def. Mtns. To Strike and Dismiss Compl. at 7, TCF Nov. 15, 2021 (emphasis added).

In *Neumann*, the plaintiff brought a defamation action against the defendant based on a negative online review of the plaintiff's wedding venue. 295 Or App at 342. In determining that the online review was made in connection with a matter of public interest, the Court of Appeals relied on a prior opinion by the Oregon Supreme Court that the review was protected by the First Amendment because it involved a "matter of public concern." *Id.* In *Neumann v. Liles*, 358 Or 706, 718-719, 369 P3d 117 (2016), the Court explained that it does not consider the defendant's words "in isolation. Rather, we must consider 'the work as a whole, the specific context in which the statements were made, and the statements themselves \* \* \*.'" *Id.* at 719. Even though the online review contained likely many negative and false statements about the plaintiff, the court held that the online review was made *in connection with* a matter of public concern, because it "*related to* matters of general interest to the public, particularly those members of the public who are in the market for a wedding venue." *Id.* at 720 (emphasis added).

Similarly, in *Mullen*, the plaintiffs brought an action against the defendants because plaintiff was shown for 3.4 seconds in a broadcast of a news story, contrary to an agreement that the plaintiff, a corrections officer, allegedly had made with the defendants due to safety concerns. 271 Or App at 700. The defendants moved to strike under the anti-SLAPP statute. *Id.* The trial court



denied the motion, reasoning that although there was no dispute that the news reports constituted an issue of public interest, the more "precise issue" was whether defendants were entitled to show plaintiff's likeness and identity and location as part of the news broadcast and whether *the filming of plaintiff* constituted an issue of public interest. *Id.* at 704.

This Court reversed and held that the trial court erred in focusing too narrowly on "the specific portion of [the] defendants' conduct that [the] plaintiffs found objectionable." *Id.* at 705. At the "initial" 31.150(2) stage, the Court explained, courts should "assess more generally what sort of claim" is before them, rather than closely inspect "every portion of what was said." *Id.* Because the defendants in *Mullen* had displayed the plaintiff's home *as part of their news report on a shooting*, this Court held the claim arose out of speech made in connection with an issue of public interest. *Id.* at 707; see also *M.G. v. Time Warner, Inc.*, 89 Cal App 4th 623, 629 (2001) (noting that the plaintiffs' characterization of the "public issue" involved was "too restrictive" and "narrow").

Here, defendants' alleged disclosures were made *in connection with* or *related to* a public issue or an issue of public interest – plaintiffs' passage of the ban. Both Tofte and Brookfield spoke in the broader context of ongoing discussions related to how concerned community members could oppose the

ban, which they believed negatively impacted the community's children – a matter of pressing public concern.

Despite those patent connections to issues of public interest, the trial court erroneously concluded that even though defendants' posts were *motivated* by the public dispute with the school board, their posts about plaintiffs' private employment could "easily be divorced" from that public dispute. (ER 290.) The trial court concluded that defendants' alleged disclosure of information related to plaintiffs' outside employment had no connection or nexus to the broader political discourse on the ban because defendants were not specifically questioning the technical qualifications of plaintiffs to serve on the Board, their posts did not contribute "to a conversation" about whether plaintiffs "were technically qualified for their public positions," and the posts did not suggest that plaintiffs' employment "influenced the controversial decisions they made." (ER 290.)

The trial court erred. A public official's personal information, including their "identities" and "qualifications" are a matter of public interest. *McIntyre v. Ohio Elections Comm'n*, 514 US 334, 346-47 (1995) (quoting *Buckley v. Valeo*, 424 US 1, 14-15 (1976)). The reason is simple: Such information is essential for people to "make informed choices among candidates for office." *Id.* Director Shannon surely understood this when he touted his employment at Selectron

Technologies on his campaign website. (ER 53-54, 56-57). Director DeHart, too, understood it when he published his employment at Lam Research on his LinkedIn page. (ER 76, 82).

Furthermore, the trial court specifically recognized that Tofte and Brookfield's comments were "for the purpose of *furthering* a conversation about how to 'hold [plaintiffs] accountable for their decisions' on the ban. (ER 290) (emphasis added). Speech aimed at accountability of public officers and their actions is a matter of public concern. In *Sheehan v. Gregoire*, 272 F Supp 2d 1135, 1139 (WD Wash 2003), the defendant posted personal information of police officers on his website in violation of a Washington law prohibiting the posting of such information with intent to harm. The Western District of Washington held that the defendant's disclosure of the personal information, which related to the topics of police accountability, was protected speech and pertained to a "legitimate public interest." *Id.* at 1139, 1139 n 2; *see also Brayshaw v. City of Tallahassee*, 709 F Supp 2d 1244, 1247 (ND Fla 2010) (posting of personal information of a peace officer, including personal address and phone number, all of which were publicly available, was matter of public significance related to issues of police accountability).

Finally, when lawfully obtained personal information of public officials is published specifically in response to public action taken by those officials, the officials' personal information becomes a matter of public concern. In *Publius v. Boyer-Vine*, 237 F Supp 3d 997, 1011 (ED Cal 2017), the California legislature passed a law similar to the Doxxing Statute here, prohibiting the post or display of the *home address or telephone number* of certain government officials. And, like the defendants here, the defendant in *Publius* took information that was all publicly available online, and reposted it on his online blog, including the names, home addresses, and phone numbers of 40 California legislature members in response to their votes in favor of certain gun control measures. *Id.* at 1004.

The Eastern District of California reasoned that the posting of the legislators' *personal information* on defendant's blog, including *their home address and phone numbers*, was "a matter of public significance." *Id.* at 1013. The Court reasoned held that "[v]iewed in isolation, the legislators' home address and phone numbers may not, in and of themselves, constitute 'a matter of public significance.'" *Id.* at 1014. But when considered in the specific context of the plaintiff's speech – political protest of their votes on gun legislation, which constituted "core political speech," with First Amendment protest "at its Zenith," the information takes on new meaning:

Publius searched publicly available documents and compiled, and \* \* \* reposted, the legislators' personal information specifically in response to legislation that required the government to maintain a database with personal information of individuals who buy firearms and ammunition in California. *When viewed in the context of political speech, the legislators' personal information becomes a matter of public concern.*

*Id.* (emphasis added).

Here, Brookfield made her post to foster participation in a significant public discussion on the NEED threat about the ban. (ER 55). She specifically believed that private employers – particularly when their good name has been used in the campaign of a public official, should at least be made aware of the political positions that the public officials are taking on these matters so that these companies could choose to take part in and influence the public discourse. (ER 44). Defendant Tofte believed she was contributing to the discussion and debate in NEED regarding whether Newberg community members should boycott the public officials who voted for the ban as part of their attempt to hold those members accountable as part of their political opposition to the ban. (ER 76-77). Plaintiffs conceded below that the alleged disclosure of personal information was "[i]n response to the political position of the plaintiffs." Joint Resp. at 2, TCF Nov 15, 2021. When viewed in the context of defendants' core political speech protesting plaintiffs' controversial vote on a ban in their capacity as public officials – plaintiffs' personal information, including

information related to their outside employment, was made in connection with a public issue or an issue of public interest.

In conclusion, defendants Tofte and Brookfield's alleged disclosures were made in connection with a public issue or an issue of public interest and the trial court erred in determining that defendants Brookfield and Tofte failed to meet their burden to establish that the anti-SLAPP statute applied under ORS 31.150(2)(d).

**II. Plaintiffs failed to meet their burden to present substantial evidence to support a prima facie case under the Doxxing Statute.<sup>7</sup>**

**A. Plaintiffs failed to present *any* evidence that Tofte disclosed "personal information."**

The Doxxing Statute prohibits knowingly causing "personal information" to be disclosed. ORS 30.835(2)(a). As relevant here, that term expressly includes "[c]ontact information for the plaintiff's employer."

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<sup>7</sup> The trial court reached the second prong only as to defendant Schwanz and did not consider whether plaintiffs had established a prima facie case as to defendants Tofte and Brookfield. Nonetheless, this Court should reach the issue as to all defendants because the trial court will necessarily have to consider the issue on remand if defendants prevail on the first prong, and this Court can provide valuable guidance on remand regarding the new Doxxing Statute not previously been analyzed by this Court. *See, e.g., Forst v. Lotspeich*, 175 Or App 163, 173 n 5, 30 P3d 1185 (2001) (addressing additional issues to provide "guidance on remand"); *Doolittle v. L.E. Wallman Co.*, 85 Or App 601, 606, 738 P2d 200 (1987) (for reasons of judicial economy, addressing an additional issue in the interest of providing "guidance on remand").

ORS 30.835(1)(d)(B) (emphasis added).

Here, Tofte did not disclose any *contact information* for DeHart's employer. At most, she published a link to the publicly available website of DeHart's employer. (ER 79). However, she did not list a telephone number, email, or other contact information for any particular supervisor or person. She also did not encourage anyone to contact DeHart's employer. In fact, plaintiffs conceded that the Doxxing Statute does not prohibit disclosure of an employer's *identity* – only the employer's contact information. (ER 230, 224). Plaintiffs failed to present prima facie evidence of this element as against Tofte.

**B. Defendants did not knowingly cause personal information to be "disclosed" because it was already widely publicly available.**

The Doxxing Statute requires a plaintiff to prove that the defendant "knowingly caused personal information to be disclosed." ORS 30.835(2)(a). Plaintiffs failed to present prima facie evidence of that element. Instead, the only evidence is that defendants merely *republished* information that previously had been disclosed by plaintiffs and their employers and was already in the public domain. Thus, at most, plaintiffs *used* the information – they did not *cause* the information "to be disclosed."

"Disclose" is not statutorily defined. Instead, the legislature provided that "[d]isclose *includes* but is not limited to, transfer, publish, distribute, exhibit, advertise and offer." ORS 30.835(1)(a). To be sure, the legislature did include other definitions in the statute for the terms "injure" and "harass." But in defining those terms, the legislature explained what those terms *mean*, not what they *include*. See, e.g. ORS 30.835(1)(b) ("Injure *means* \* \* \*."). But instead of defining the term "disclose," the legislature simply offered examples for the *means and manner* in which a person may disclose – including "publish." But that doesn't answer the question presented here – whether the legislature intended the term "disclose" to mean disclosing only *private information* or, as the plaintiffs argued below, any contact information of an employer, regardless of whether that information previously had been disclosed and made broadly available to the public.

Since there is no statutory definition of "disclose," this Courts looks to the plain meaning of the statutory term. *State v. Gonzalez-Valenzuela*, 358 Or 451, 460, 365 P3d 116 (2015). The plain and ordinary meaning of "disclose" includes to "expose to view : lay open or uncover (something hidden from view)" to "make known," or "to open up to general knowledge." *Webster's Third New Int'l Dictionary*, 645 (unabridged ed 2002). Synonyms include



"divulge" and "reveal" – again, actions that operate on facts and entities previously hidden, not those already exposed. *See id.* at 664, 1942.

Furthermore, the text of ORS 30.835(2) describes the unlawful action as one for "improper disclosure of *private information*." (Emphasis added.)

"Private" means "a: not known publicly or carried on in public : not open: SECRET" or "having knowledge not publicly available." *Id.* at 1805. Thus, the legislature expressly included in the statute its intent to prohibit only the disclosure of *private information* – not information widely available to the public and for which the plaintiffs have taken no effort to keep from the general public. When the information at issue is widely available to the public at large, one cannot "dox" someone simply by republishing that information to a smaller group of persons. That is why the statute creates a cause of action only for "improper disclosure of *private information*." ORS 30.835(2) (emphasis added).

Plaintiffs nonetheless argued below that "disclose" means *any communication*, whether or not the information is private or in the public domain. If the legislature actually intended that interpretation, that would potentially implicate protected speech, because it would include the truthful publication of information lawfully obtained from the public domain about public officials. *See infra* discussion, Section III (explaining that such truthful, lawfully obtain publications commenting on public officials are protected

speech).

A maxim of statutory construction requires the Court to avoid constitutional issues if possible. *State v. Stoneman*, 323 Or 536, 540 n 5, 920 P2d 535 (1996); *see also State v. Page*, 43 Or App 417, 419, 602 P2d 1139 (1979) (courts must construe statutes, "if at all possible, to save their constitutionality"). And here, the legislature itself sought to avoid application of the Doxxing Statute to free speech.

The legislature enacted ORS 30.835 as part of House Bill (HB) 3047 (2021). Or Laws 2021, ch 300, §§ 1-3. The bill was the result of an interim work group that studied the impact of the bill on free speech law in Oregon. Aaron Knott, the Director of the Multnomah County District Attorney's Office and a member of the workgroup that drafted HB 3047, testified that posting information online is generally permitted and protected free speech conduct. Audio Recording House Comm. on the Judiciary, Subcomm. on Equitable Policing, HB 3047, Mar 1, 2021 at 25:08, (comments of Aaron Knott), <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2021031046>. Knott explained that putting personal information online is permissible in a number of different situations, and "even if you want to expose them to political speech, they are an elected official and you think they need to hear from their constituents" that is generally "fine" and constitutes protected

free expression. *Id.* He further emphasized that such speech must inflict some "constitutionally recognized harm" before it would be actionable under the statute. *Id.*

It is crucial to bear these considerations in mind when interpreting the Doxxing Statute's scope. All three Defendants in this case have been sued for attempting to influence policy at the public schools where they work and where their children are educated. Plaintiffs seek to hold them liable for engaging proactively with the levers of American democracy, exercising their right to debate public issues and organize with like-minded community members around avenues for political change – including by trying to sway elected officials. These types of political activities are afforded the "broadest protection" under our federal and state constitutions and cannot be curtailed by statute. *Buckley*, 434 US at 14-15.

Here, the constitutional concerns outlined in Section III can be avoided by interpreting the term "disclose" according to its plain and ordinary meaning and that the Doxxing Statute only applies to the disclosure of "private information" – not the republication of information widely available in public records and publicly available sources. This Court should therefore construe the statute narrowly to avoid such concerns.

**C. Defendants did not know, and could not have known, that plaintiffs objected to the republishing of their publicly available employment information.**

The Doxxing Statute also requires a plaintiff to prove that the defendant "knew or reasonably should have known that the plaintiff did not consent to the disclosure." ORS 30.835(2)(b). Plaintiffs failed to present prima facie evidence of that element as well. Plaintiffs' evidence is insufficient as a matter of law because it is undisputed that the information was publicly available information that plaintiffs or their employers had disclosed and was widely publicly available. Plaintiffs presented no evidence that they took any efforts to keep the information private or that a reasonable person could possibly know that they would not want such publicly available information not to be republished.

The trial court recognized that Chair Brown had advertised his place of employment to the press and in School Board meetings, making it "difficult" for him to prove that Schwanz "knew or should have known" that he did not consent to her sharing his employer's contact details. (ER 291) Even so, the trial court reasoned, Schwanz should have realized that Chair Brown would object to her "research[ing], identify[ing], and then disclos[ing] details about who Brown's boss was and how to reach that individual." (*Id.*)

But again, *anyone* could easily identify the information because Chair Brown broadcast his employment as a public-school athletic coach in the local media and his own employer, Canby High, made his supervisor's identity and contact information publicly available on the Canby School District website. Similar logic applies to Brookfield and Tofte. Shannon and DeHart similarly publicized the identity of their employers, and their employers publicized their website and contact information. Brookfield learned about Shannon's place of employment from his own web page, entered the company's name into the world's most ubiquitous search engine, and was immediately presented with contact information at the top of her search results. She did not even have to click on any of the result links to see a phone number; it was already there, displayed along with a physical address, hours of operation, and several Google reviews. Tofte, too, found Lam Research's website publicly available on Google.

Perhaps, in a case where the defendants had to engage in "sleuth[ing]," to find *private* information not available to the public, it might be reasonable to assume someone would not consent to the disclosure of such information. But that is not the case here. Extending the statute to defendants' conduct would effectively require the public to guess as to whether public officials, whose information is already in the publicly domain, would consent to the mere *use* of

that information. That is not what the legislature intended. The trial court erred in construing the Doxxing Statute to reach such information.

**D. Reasonable persons in plaintiffs' positions – public officials – would not have been harassed by the republishing of publicly available information.**

The Doxxing Statute also requires a plaintiff to prove that a reasonable person would be \* \* \* harassed by the disclosure. ORS 30.835(d). ORS 30.835(1)(c) defines the term "harass" as follows:

"to subject another to severe emotional distress such that the individual experiences anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of severe emotional distress or a mental health diagnosis and is protracted rather than merely trivial or transitory."

Although plaintiffs presented testimony that they subjectively felt harassed, the trial court was required to determine whether there was any evidence that their subjective "severe emotional distress" was objectively reasonable. ORS 30.835(2)(d); *Keller v. Armstrong World Indus., Inc.*, 197 Or App 450, 467, 107 P3d 29, *adh'd to on recons*, 200 Or App 406, 115 P3d 247 (2005), *aff'd*, 342 Or 23 (2006) (plaintiff's subjective belief not determinative; rather reasonable person standard determined using an objective standard). This Court considers the context at issue and the victim's particular situation and individual circumstances when considering whether a "reasonable person" would be harassed. *C.f. King v. W.T.F.*, 276 Or App 533, 539, 369 P3d 1181

(2016) (subjective alarm must be objectively reasonable for a person *in the victim's situation*); *Elliott v. Strobe*, 307 Or App 156, 161, 476 P3d 972 (2020) (conduct would not cause a reasonable person *in the petitioner's situation* to be apprehensive or afraid).

Here, plaintiffs' alleged subjective "severe emotional distress" was not objectively reasonable. In particular, plaintiffs testified that they felt afraid in their *homes* and *in public*. For instance, Brown testified that he felt sleepless at home or sometimes kept his garage door shut at home. (ER 144-45.) Shannon testified that he avoided eating food "in [his] community," began carrying a weapon, felt sleepless at home, and put a camera outside of his home. (ER 146-47.) DeHart testified that he felt the need to lock his doors at home, slept with personal protection at home, asked his neighbors at home, and felt restless and aware and exhausted at home. (ER 148-49.)

This type of fear and anxiety is unreasonable as a matter of law, as it has no reasonable nexus to the disclosure of their *employers'* contact information. Furthermore, the information was already in the public domain, and it is unreasonable for plaintiffs to suddenly experience severe emotional distress when the information already had been accessible to anyone in the public.

Finally, reasonable persons *in plaintiffs' position* would not experience *severe emotional distress* at home and in public places by the republishing of publicly available information. As public officials, plaintiffs are subject to a reasonable level of criticism, which they already were experiencing a significant amount of. *See Gertz v. Robert Welch, Inc.*, 418 US 323 (1974) (public officials "run[] the risk of closer public scrutiny than might otherwise be the case"). The level of stress they claim from information they already disclosed and that was already in the public simply is not reasonable.

**E. Plaintiffs failed to present prima facie evidence that they were actually harassed or that any harassment was caused by defendants.**

Plaintiffs testified that they "believe[d]" their employers received unsolicited contacts in response to the NEEd postings but presented no evidence that any contacts actually occurred. (ER 145, 147, 149). Plaintiffs presented no affidavits or declarations from their employers or anyone who contacted their employers as a result from the NEEd postings. Plaintiffs' unsupported beliefs are insufficient as a matter of law.

To attempt to cure this clear lack of evidence, plaintiffs claimed that they suffered severe emotional distress only at their home and in places of public. But plaintiffs have been the subject of controversy and public outcry including community protesting, backlash at school board meetings, and nationwide



public attention. Plaintiffs fail to connect defendants' alleged disclosure of their employers' contact information with their alleged severe emotional distress in public and at home. Finally, the information already was widely publicly available. Plaintiffs cannot establish that the singular NEED postings – as opposed to the information existing in other sources in the public domain – was the sole or even substantial factor of their alleged anxiety, stress, and harm.

**III. Alternatively, application of the Doxxing statute to defendants violates their free speech rights under Article I, Section 8 and the First Amendment to the United States Constitution.**

**A. Article I, Section 8, of the Oregon Constitution**

Article I, section 8, of the Oregon Constitution provides, in part, that "[n]o law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever[.]" Article I, Section 8 guarantees freedom of expression without qualification. *Stoneman*, 323 Or at 542.

The Doxxing Statute makes unlawful the "disclosure" – including publishing – of personal information. ORS 30.835(2)(a). The term "disclosure" prohibits expression as a means of achieving proscribed effects, bringing the law within the second category of *State v. Robertson*, 293 Or 402, 649 P2d 659 (1982), and subjecting it to a test for overbreadth. Examples of laws that fall within the *Robertson* second category are the torts of defamation, which focus

on the forbidden effect, but prohibit expression to achieve those results.

*Huffman and Wright Logging Co. v. Wade*, 317 Or 445, 456, 857 P2d 101 (1993). As argued above, this Court should construe the statute narrowly to avoid overbreadth by interpreting the term "disclosure" to encompass only disclosures of private information and not the lawful disclosures of truthful information involving public officials, which encompasses protected speech.

Even statutes that are by their terms aimed only at "effects" are subject to challenges on the ground that the statute's reach, as applied to the defendant, extends to privileged expression. *State v. Plowman*, 314 Or 157, 164, 833 P2d 558 (1992); *City of Eugene v. Miller*, 318 Or 480, 490, 871 P2d 454 (1994) (as applied challenge asks whether the law was applied so that it did, in fact, reach privileged communication).

When a person engages in the act of communication in an attempt to influence their public officials, those communications are "political speech" and protected by Article I, Section 8. See *Fidanque v. State ex rel. Or. Government Standards and Practices Com'n*, 328 Or 1, 7, 969 P2d 376 (lobbyists were engaged in political speech because engaged in the act of communicating to the legislature on political subjects). Plaintiffs do not contend that defendants engaged in any non-expressive conduct out of which liability could arise. See *Huffman*, 317 Or at 459 (protestor's activity involved non-expressive conduct

for which liability could attach). As applied to defendants, the statute is unlawful because it chills their protected core political speech and violates their free speech rights under Article I, Section 8.

### **B. First Amendment**

Political expression is at the heart of the values expressed in the First Amendment. *McIntyre*, 514 US at 346; *In re Fadeley*, 310 Or 548, 565, 802 P2d 31(1990). Defendants were engaged in "core political speech" because they were involved in "interactive communication concerning political change." *Meyer*, 486 US at 421-22. Expressions of grievance and protest regarding political issues clearly qualify for constitutional protection. *Sullivan*, 376 US at 271.

The fact that some political speech may be intended to exercise a "coercive impact" on someone or something to effect change "does not remove [it] from the reach of the First Amendment." *Org. for a Better Austin v. Keefe*, 402 US 415, 419 (1971) (holding that the First Amendment protected pamphleteering used to critique a local business and influence its conduct). Indeed, such speech may be particularly deserving of protection, given that it is more likely to generate censorious pushback and retaliation.

Furthermore, defendants posted lawfully obtained and truthful information about a matter of public concern in political protest. Statutes that punish the publication of truthful information on a matter of public concern rarely pass constitutional muster. *Bartnicki v. Vopper*, 532 US 514, 527 (2001); *see also Neumann*, 358 Or at 716 (requiring proof of falsity in defamation claims to survive First Amendment defenses). When they are used to target speech about public officials, they are even more constitutionally suspect, because of their chilling effect on public debate. *Sullivan*, 376 US at 279 ("would-be critics of official conduct may be deterred from voicing their criticism \* \* \* because of doubt whether [the statement's lawfulness] can be proved in court or fear of the expense of having to do so").

Courts considering similar laws – the prohibition of the publication of personal information – have determined that such laws could not survive scrutiny under the First Amendment when involving public officials. *See Publius*, 237 F Supp 3d at 1017-21 (when in response to legislators' passage of gun legislation, truthful dissemination of personal information about legislators – information that already was in the public domain and lawfully obtained – triggers exacting First Amendment scrutiny; California statute was not narrowly tailored in part because it did not differentiate *between information newly disclosed and information already in the public domain*); *see also Sheehan*, 272

F Supp 2d at 1138 (Washington law prohibiting publication of the residential addresses, telephone numbers, birthdates or social security numbers of police officers "with the intent to harm or intimidate" was unconstitutional because "truthful lawfully-obtained publicly-available personal identifying information constitutes a mode of constitutionally proscribable speech" and state had no legitimate interest in punishing publication of information *lawfully* obtained).

The First Amendment protects defendants' publication of truthful information, lawfully obtained, already in the public domain, for the purposes of protesting plaintiffs' political action. Plaintiffs may complain about the intended use of that information, but that merely punishes defendants because they are vocal critics of plaintiffs. Oregon has no compelling interest in regulating the disclosure of public information lawfully obtained, particularly when the public has an interest in such information related to public officials. The Doxxing Statute thus is not narrowly tailored to achieve a compelling state interest. As applied to defendants here, it is unconstitutional under the First Amendment.

## CONCLUSION

For the foregoing reasons, this court should reverse and remand with instructions for the trial court to enter and order granting Defendants' special motions to strike and addressing only the remaining issue of defendants' attorney fees related to the anti-SLAPP motions on remand.

RESPECTFULLY SUBMITTED this 12th day of July, 2022.

By: /s/ Kelly Simon

Kelly Simon, OSB No. 154213

(she/her/hers)

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*Debbie Tofte, Aj Schwanz, and Tamara*

*Brookfield*

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

TREVOR DEHART, RENEE POWELL, BRIAN SHANNON, and DAVE BROWN,

Plaintiffs,

vs.

DEBBIE TOFTE, KATHERINE BARNETT, AJ SCHWANZ, and TAMARA BROOKFIELD,

Defendants.

Case No. 21YAM0001CV

**PLAINTIFF'S COMPLAINT**

**THIS CASE IS NOT SUBJECT TO MANDATORY ARBITRATION UNDER ORS 36.400 to 36.425**

**Amount of Prayer: \$40,000  
Filing fee: \$281  
Per ORS 21.135(1), (2)(a)**

Plaintiff Trevor DeHart, Renee Powell, Brian Shannon, and Dave Brown (collectively "Plaintiffs"), by and through its counsel Thenell Law Group, P.C., brings this action for declaratory relief and alleges as follows:

**JURISDICTION**

1.

Jurisdiction and venue before this Court is proper as all injury has occurred in Yamhill County and all Defendants reside in the State of Oregon.

**PARTIES**

2.

Plaintiffs are all members of the Newberg School Board.

3.

Defendants Debbie Tofte, Katherine Barnett, Aj Schwanz, and Tamara Brookfield are collectively referred to as “Defendants”.

**GENERAL FACT ALLEGATIONS**

4.

Plaintiffs seek an order declaring Defendants violated House Bill 3047 as enrolled on June 15, 2021, injunctive relief preventing future disclosures of private information by Defendants, and legal relief for damages.

5.

All disclosures of private information by Defendants were posted to Facebook after June 15, 2021.

6.

House Bill 3047, enrolled on June 15, 2021, states that “A plaintiff has a cause of action for improper disclosure of private information if the plaintiff establishes by a preponderance of the evidence that: [t]he defendant, with the intent to stalk, harass or injure the plaintiff, knowingly caused personal information to be disclosed; [t]he defendant knew or reasonably should have known that the plaintiff did not consent to the disclosure; [t]he plaintiff is stalked, harassed or injured by the disclosure; and [a] reasonable person would be stalked, harassed or injured by the disclosure. *Exhibit 1*.

7.

House Bill 3047 defines Personal information as “[t]he plaintiffs home address, personal email address, personal phone number or social security number; [c]ontact information for the plaintiffs employer; [c]ontact information for a family member of the plaintiff; [p]hotographs of

1 the plaintiffs children; or [i]dentification of the school that the plaintiffs children attend.” *Exhibit*  
2 *1.*

3 8.

4 Defendant Aj Schwanz (“Schwanz”) posted on Facebook, “Chair Brown is currently  
5 employed by the Canby School District as the girls tennis coach. If you know of students who  
6 have been coached by Chair Brown, please encourage them to share their stories/concerns  
7 with the Canby Athletic Director: ...” (emphasis in original). *Exhibit 2.*

8 9.

9 Defendant Katherine Barnett (“Barnett”) posted on Facebook a picture of an email. The  
10 caption of the picture states “From Potter’s Vineyard owners:”, the email reads, “Hi Kathy and  
11 Carly, Sorry for the delay in getting back to you about Renee Powell. We were very surprised to  
12 hear about this so we contacted the artist directly. Her art is now being pulled from the tasting  
13 room. Sandy and I do want to reiterate our stance on being full inclusion and welcoming of all.  
14 Thank you again for letting us know about it. Cheers, Bill and Sandy.” *Exhibit 3.*

15 10.

16 Plaintiff Renee Powell (“Powell”) has already faced harassment because of the improper  
17 disclosure of private information. Plaintiff Powell had her artwork removed from The Potter’s  
18 Vineyard “until things calm down.” *Exhibit 4.*

19 11.

20 Defendant Debbie Tofte (“Tofte”) commented “Key tenets for Lam Research, the  
21 employer of Trevor DeHart. This is their dedication to education. Read the last section, “Quality  
22 of Life” and you’ll see just in that tidbit how DeHart’s values conflict with his employers.  
23 <https://www.lamresearch.com/.../envir.../the-lam/foundation/>”. *Exhibit 5.*

24 12.

25 One person commented on Debbie Tofte’s comment “Lam Research is like 3 blocks from  
26 my house. I’m thinking they may need to hear from a local community member.”

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13.

Defendant Tamara Brookfield (“Brookfield”) commented “+1 (503) 443-1400, please call them and express your concerns about his demonstrated behavior. I’d avoid hearsay.” *Exhibit 6.*

14.

The phone number that Brookfield posted is the phone number to Shannon’s employer at the time of the comment. Members of the public have contacted Shannon’s employer to obtain adverse employment action against Petitioner Shannon.

15.

Defendants reasonably should have known that the Plaintiff did not consent to the disclosure.

**FIRST CLAIM OF RELIEF**

**Violation of House Bill 3047**

**All Defendants**

16.

Plaintiffs reallege all paragraphs previously alleged.

17.

Defendants, with the intent to harass the Plaintiffs, knowingly caused personal information to be disclosed.

18.

Defendants, knew or reasonably should have known, that the Plaintiffs did not consent to the disclosure.

19.

Plaintiffs were harassed by the disclosure such that the individuals have experienced anxiety, fear, and torment.

20.

A reasonable person would be harassed by the disclosure.

1 21.

2 As a result of the Defendants conduct, Plaintiffs sustained economic damages in the form  
3 of emotional distress and economic loss in the amount of \$40,000.

4 22.

5 Plaintiff Powell has been subjected to severe emotional distress such that Powell has  
6 experienced anxiety, fear, and apprehension. Powell does not go out to eat in Newberg since the  
7 improper disclosure of private information has occurred, which she used to do before the  
8 disclosure. Powell also has to meet privately, or go to another town, when she is having coffee or  
9 dinner with friends for fear that someone is listening to her conversations. Powell has also  
10 experienced anxiety in the form of losing weight and sleep. Powell has had multiple security  
11 cameras installed because of the improper disclosure of private information by the Defendants.

12 23.

13 Plaintiff DeHart has been subjected to severe emotional distress such that DeHart has  
14 experienced anxiety, fear, and apprehension. DeHart avoids local public places as much as he  
15 can and has experienced restless nights due to anxiety. DeHart now locks his doors at night and  
16 sleeps with personal protection nearby. DeHart has also had to ask his neighbors to keep an eye  
17 on any abnormal vehicles or activity in the neighborhood. DeHart also has increased situational  
18 awareness while he is at home and away, which has resulted in mental and physical exhaustion  
19 because of the improper disclosure of private information.

20 24.

21 Plaintiff Shannon has been subjected to severe emotional distress such that Shannon has  
22 experienced anxiety and fear. Shannon avoids local places and eating out in Newberg. He also  
23 now carries personal protection equipment. Shannon has also installed a video camera outside of  
24 his house and has trouble sleeping because of the improper disclosure of private information by  
25 the Defendants.

26 ///

25.

Plaintiff Brown has been subjected to severe emotional distress such that Brown has experienced anxiety and fear. Brown has trouble sleeping and now wakes up to any noise in his house. Brown does not keep his garage door open anymore of fear of someone entering his garage because of the improper disclosure of private information by the Defendants.

26.

As a result of Defendant's improper disclosure of private information, Plaintiffs have suffered emotional distress and Plaintiffs are entitled to fair and reasonable compensation.

27.

As a result of Defendants improper disclosure of private information, Plaintiffs have suffered economic loss and Plaintiffs are entitled to fair and reasonable compensation.

28.

Plaintiffs bring this action under ORS 28.010 seeking a declaratory judgment regarding the improper disclosure of private information by Defendants under the Oregon Revised Statutes. Plaintiffs will be seeking a temporary restraining order and preliminary injunction to enjoin Defendants from continuing to improperly disclose private information of Plaintiffs.

WHEREFORE, Plaintiffs pray for a judgment declaring Defendants improperly disclosed private information of Petitioners, because:

- (a) The posts and comments made by Defendants violate House Bill 3047, as enrolled.
- (b) Plaintiffs have suffered emotional distress and are entitled to fair and reasonable compensation.
- (c) Plaintiffs have suffered economic loss and are entitled to fair and reasonable compensation.
- (d) Plaintiffs have incurred reasonable attorney fees and are entitled to



1 compensation.

2  
3  
4 DATED: October 18, 2021

5  
6 THENELL LAW GROUP, P.C.

7  
8 By: /s/ Daniel E. Thenell  
9 Daniel E. Thenell, OSB No. 971655  
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16 *Of Attorneys for Plaintiffs*

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

TREVOR DEHART, RENEE POWELL,  
BRIAN SHANNON, and DAVE BROWN,

Petitioner,

vs.

DEBBIE TOFTE, KATHERINE BARNETT,  
AJ SCHWANZ, and TAMARA  
BROOKFIELD,

Respondent.

Case No. 214AM0001CV

DECLARATION OF DANIEL E. THENELL  
IN SUPPORT OF TEMPORARY  
RESTRAINING ORDER

I, Daniel E. Thenell, as the attorney of record for the Petitioner in the above captioned matter and hereby declare the following:

1. I am over the age of eighteen and make this declaration based on my knowledge.
2. Attached as Exhibit 1 is a true and accurate copy of House Bill 3047 as enrolled on June 15, 2021.
3. Attached as Exhibit 2 is a true and accurate copy of a Facebook post, dated August 15, 2021 by Respondent Aj Schwanz asking people to share stories/concerns with the employer of Petitioner Brown.

- 1 4. Attached as Exhibit 3 is a true and accurate copy of a Facebook post, dated August 18,
- 2 2021, by Respondent Katherine Barnett detailing that Petitioner Powell had her artwork
- 3 removed from Potters Vineyard.
- 4 5. Attached as Exhibit 4 is a true and accurate copy of an email dated August 19, 2021,
- 5 from Potters Vineyard asking Petitioner Powell to pick up her artwork from the winery.
- 6 6. Attached as Exhibit 5 is a true and accurate copy of a Facebook post by Debbie Tofte
- 7 including a link to Petitioner DeHart's employer.
- 8 7. Attached as Exhibit 6 is a true and accurate copy of a Facebook post by Tamara
- 9 Brookfield which included the phone number to Petitioner Shannon's employer at the
- 10 time of the comment.

11 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF  
 12 MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE  
 13 AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

14 DATED: this 18<sup>th</sup> day of October, 2021.

15 THENELL LAW GROUP

16 /s/ Daniel E. Thenell  
 17 Daniel E. Thenell, OSB No. 971655  
 18 Dan@ThenellLawGroup.com  
 19 *Of Attorney for Petitioner*

Press Enter to post.



Aj Schwanz shared a link.

Admin · August 15 ·



Chair Brown is currently employed by the Canby School District as the girls tennis coach.

**If you know of students who have been coached by Chair Brown, please encourage them to share their stories/concerns with the Canby Athletic Director:**

Benjamin Winegar

Associate Principal / Athletic Director - Canby High

(503) 263-7204 ext. 5304

winegarb@canby.k12.or.us

<https://www.osaa.org/teams/43177>

<https://pamplinmedia.com/.../460445-374489-brown-takes...>



Like · Reply · 5w



**Debbie Tofte**

Key tenets for Lam Research, the employer of Trevor DeHart. This is their dedication to education. Read the last section, "Quality of Life" and you'll see just in that tidbit how DeHart's values conflict with his employers.  
<https://www.lamresearch.com/.../envir.../the-lam-foundation/>



LAMRESEARCH.COM

The Lam Foundation | ESG | Lam Research

Like · Reply · 5w · Edited



**Debbie Tofte**

Here are the Core Values of Lam Research:  
Achievement  
Ability  
-Inclusion & diversity. (WHAT? How does DeHart stand to work for these people?!)  
Innovation & continuous improvement  
Mutual trust & respect (AGAIN...WHAT? Does DeHart know this about his employer?!)  
Open communication.  
Ownership & accountability  
Teamwork. (He seriously can't know this. And he remains working for them. Someone should point these Core Values out to him. He needs to know this info! They seriously conflict). 😊

Like · Reply · 5w · Edited



**Angie Spracher**

**Debbie Tofte** Lam Research is like 3 blocks from my house. I'm thinking they may need to hear from a local community member.

Like · Reply · 5w

Like · Reply · 7w

**Caitlin Shockley**

<https://www.selectrontechnologies.com/>

According to [votebrianshannon.com](http://votebrianshannon.com), that's where he works



SELETRONTECHNOLOGIES.COM

Selectron Technologies, Inc. – Trusted Solutions. Real Value.

Like · Reply · 7w



**Tamara Brookfield**

**Caitlin Shockley** +1 (503) 443-1400, please call them and express your concerns about his demonstrated behavior. I'd avoid hearsay.

Like · Reply · 7w

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF YAMHILL

TREVOR DEHART, RENEE POWELL,  
BRIAN SHANNON, and DAVE BROWN,

Plaintiffs,

v.

DEBBIE TOFTE, KATHERINE BARNETT,  
AJ SCHWANZ, and TAMARA  
BROOKFIELD,

Defendants.

Case No. 21YAM0001CV

DEFENDANT KATHERINE  
BARNETT’S SPECIAL MOTION TO  
STRIKE PURSUANT TO ORS 31.150

ORAL ARGUMENT REQUESTED

As all defendants anticipate filing anti-SLAPP motions, Barnett, on behalf of all defendants, requests a 90-minute hearing. Please note that pursuant to ORS 31.152(1), the hearing on the special motions to strike is to be set within 30 days or as soon thereafter as docket conditions allow. Official reporting services are not requested.

**UTCRC 5.010 STATEMENT**

Conferral is not required on anti-SLAPP motions. *Bryant v. Recall for Lowell’s Future Comm.*, 286 Or App 691, 696 (2017). Nevertheless, counsel attempted to contact plaintiffs’ counsel by email several times, and also left a voicemail message, to no avail.

**MOTION**

Defendant Katherine Barnett hereby moves, pursuant to ORS 31.150(1), to strike plaintiffs’ claim for declaratory relief—the sole claim for relief that they allege. Plaintiffs’ undifferentiated claim against all defendants is subject to Oregon’s anti-SLAPP statute, ORS 31.150 to 31.155, because that claim arises from statements made in a public forum in

1 element of plaintiffs' misguided claim in this brief. Rather, she addresses below some of the  
2 flaws and defenses plaintiffs must overcome and will reply as appropriate to the arguments and  
3 evidence plaintiffs present in response.

4 **A. The Legislature Didn't Intend HB 3047 to Apply to Plaintiffs' Claim.**

5 Plaintiffs cite HB 3047, which has not yet been chaptered in the Oregon Revised Statutes  
6 but which became effective on June 15, 2021, as the basis for the declaratory relief claim. *See*  
7 Davidson Decl., Ex. 7 (Measure History). HB 3047 created a civil cause of action for the  
8 improper disclosure of private information. Davidson Decl., Ex. 8 and 9 (Staff Measure  
9 Summaries). The legislation was created to address doxing, "the act of publicly revealing  
10 identifying information about someone, usually online, with the intent to stalk, harass, or injure  
11 the person who information has been revealed." Davidson Decl., Ex. 10 (McCullough testimony,  
12 May 12, 2021). HB 3047 is "the product[] of an anti-doxing workgroup that was formed through  
13 the work of the Joint Committee on Transparent Policing and Use of Force Reform." Davidson  
14 Decl., Ex. 11 (Testimony of Rep. Janelle Bynum). The statute was designed primarily to protect  
15 public employees, like police officers, and politically engaged residents, like protesters, from  
16 doxing. *See* Davidson Decl., Ex. 11 ("Throughout the summer, I heard from constituents,  
17 journalists, advocates, organizers, and members of law enforcement who were negatively  
18 impacted by doxxing.").

19 In developing HB 3047, the Oregon legislature sought to avoid unconstitutional  
20 restrictions on freedom of speech. Kimberly McCullough, the Legislative Director at the Oregon  
21 Department of Justice, was part of the work group that developed HB 3047. She told the Senate  
22 Judiciary Committee that she and the group "worked hard to craft legislation which would  
23 provide a remedy to victims of doxing while also navigating the free speech rights contained in  
24 the First Amendment of the federal Constitution and Article I, section 8 of the Oregon  
25 Constitution." Davidson Decl., Ex. 10.

26 Similarly, Aaron Knott, the Policy Director for the Multnomah County District



1 Attorney's Office and who served on the work group for HB 3047, testified that "a lot of work  
2 has gone into this bill to make sure that it doesn't accidentally trod on free speech . . . ."  
3 Testimony of Aaron Knott, House Committee on Judiciary, House Subcommittee on Equitable  
4 Policing (Mar. 1, 2021) (25:05 to 28:44), available at [https://invintus-client-  
5 media.s3.amazonaws.com/4879615486/1c1648d33a96ff822ea4ad15ab101f2a635c22f9.mp4](https://invintus-client-media.s3.amazonaws.com/4879615486/1c1648d33a96ff822ea4ad15ab101f2a635c22f9.mp4). He  
6 explained that "the State of Oregon has some of the strongest freedom of speech protections in  
7 the country." *Id.* Accordingly, "the first part of this bill uses language that is absolutely necessary  
8 to survive a constitutional challenge under a case called *State v. Robertson*, which is the Oregon  
9 Supreme Court's test." *Id.* He explained that freedom of speech permits posting information  
10 online, and that:

11 "The only point where it becomes actionable is if by putting it online you intend a  
12 constitutionally recognized harm. That means that you can put somebody's  
13 personal information online for a number of different reasons, you know even if  
14 you want to expose them to political speech, they're an elected official and you  
15 think they need to hear from their constituents, that's fine. It's when you cross the  
16 line over into intending them a constitutionally recognized harm, something like .  
17 . . harassment . . . ."

18 *Id.*

19 Were HB 3047 to apply to the alleged disclosure regarding a public official as alleged in  
20 paragraph 9 of the Complaint in this case, that law would violate the First Amendment of the  
21 Federal Constitution and Article I, Section 8 of the Oregon Constitution. *Snyder v. Phelps*, 562  
22 US 443, 451–52 (2011) ("Speech on matters of public concern . . . is at the heart of the First  
23 Amendment's protection.") (internal quotations omitted). However, this court need not determine  
24 the outermost reach of HB 3047. It should simply construe the statute narrowly to avoid  
25 unconstitutionality, as the Oregon legislature intended, and, therefore, hold that it has no  
26 application to plaintiffs' claim. To that end, the Oregon Supreme Court has explained,

27 "any judicial narrowing construction, adopted to address a statute's  
28 unconstitutional overbreadth, must keep faith with the legislature's policy choices,

1 as reflected in the statute's words, and respect the legislature's responsibility in the  
2 first instance to enact laws that do not intrude on the constitutionally protected  
right of free speech.”

3 *State v. Rangel*, 328 Or 294, 304 (1999). For the reasons above, a narrow interpretation of HB  
4 3047 in this case would be consistent with the legislature’s intent in crafting the bill to avoid  
5 conflict with Article 1, section 8 and the First Amendment.

6 If this court determines it cannot interpret HB 3047 narrowly to avoid plaintiffs’ claim,  
7 then the newly enacted law is unconstitutional pursuant to the very case Mr. Knott cited in his  
8 testimony. *See State v. Robertson*, 293 Or 402, 435-36 (1982) (“[W]e cannot escape the  
9 conclusion that ORS 163.275 as written reaches areas of constitutionally privileged expression  
10 and thus is invalid unless its coverage is narrowed to exclude these areas. We also conclude that  
11 in the case of this statute the needed narrowing cannot be accomplished by judicial  
12 interpretation.”).

13 **B. Plaintiffs Can’t Support a *Prima Facie* Case Under HB 3047.**

14 Plaintiffs’ claim against Barnett is shockingly inadequate. They cannot show a  
15 probability that they will prevail on their claim because it fails as a matter of law. The enrolled  
16 version of HB 3047 establishes four elements:

17 “(2) A plaintiff has a cause of action for improper disclosure of private  
18 information if the plaintiff establishes by a preponderance of the evidence that:  
19 (a) The defendant, with the intent to stalk, harass or injure the plaintiff,  
20 knowingly caused personal information to be disclosed;  
21 (b) The defendant knew or reasonably should have known that the plaintiff  
22 did not consent to the disclosure;  
(c) The plaintiff is stalked, harassed or injured by the disclosure; and  
(d) A reasonable person would be stalked, harassed or injured by the  
disclosure.”

23 HB 3047, Sec. 1, sub. 2; Davidson Decl., Ex. 12. Plaintiffs cannot satisfy those elements.

24 **1. No Personal Information.**

25 Plaintiffs’ claim fails because their Complaint does not identify any personal information  
26 disclosed by Barnett. To establish a claim under HB 3047, a plaintiff must show that the

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF YAMHILL

TREVOR DEHART, RENEE POWELL,  
BRIAN SHANNON, and DAVE BROWN,

Plaintiffs,

v.

DEBBIE TOFTE, KATHERINE BARNETT,  
AJ SCHWANZ, and TAMARA  
BROOKFIELD,

Defendants.

Case No. 21YAM0001CV

DECLARATION OF CLIFFORD S.  
DAVIDSON

I, Clifford S. Davidson, declare as follows:

1. I am a partner of Snell & Wilmer, LLP, counsel to defendant Katherine Barnett, and cooperating counsel with the ACLU of Oregon, in connection with this action. I make this declaration in that capacity and based on my personal knowledge. If called upon to do so, I would testify truthfully as follows.

2. Attached hereto as Exhibit 1 is a true and correct copy of the September 28, 2021 Board Packet for the Newberg School District, which I caused to be downloaded from the Newberg School District’s website at <https://www.newberg.k12.or.us/district/school-board-meeting-24>.

3. Attached hereto as Exhibit 2 is a true and correct copy of an article from KATU dated September 28, 2021, which I caused to be downloaded from KATU’s website at <https://katu.com/news/local/newberg-students-teachers-rally-in-support-of-rescinding-flag-ban>.

Although the date of the article does not appear on the PDF, the date is visible on the online

1 version.

2 4. Attached hereto as Exhibit 3 is a true and correct copy of an article from OPB  
3 dated September 29, 2021, which I caused to be downloaded from OPB's website at  
4 [https://www.opb.org/article/2021/09/29/newberg-school-board-political-symbols-blm-lgbtq-  
5 pride/](https://www.opb.org/article/2021/09/29/newberg-school-board-political-symbols-blm-lgbtq-pride/).

6 5. Attached hereto as Exhibit 4 is a true and correct copy of an article from The  
7 Washington Post dated September 29, 2021, which I caused to be downloaded from The  
8 Washington Post's website at [https://www.washingtonpost.com/education/2021/09/29/oregon-  
9 newberg-ban-pride-blm/](https://www.washingtonpost.com/education/2021/09/29/oregon-newberg-ban-pride-blm/).

10 6. Attached hereto as Exhibit 5 is a true and correct copy of the printer-friendly  
11 version of the School Board page of the Newberg Public Schools' website, which I caused to be  
12 downloaded at <https://www.newberg.k12.or.us/district/school-board>.

13 7. Attached hereto as Exhibit 6 is a true and correct copy of the Newberg School  
14 District policy titled Board Member Removal from Office, which I caused to be downloaded at  
15 <https://policy.osba.org/newberg/AB/index.asp>.

16 8. Attached hereto as Exhibit 7 is a true and correct copy of the Measure History of  
17 2021 House Bill 3047, which I caused to be downloaded from the Oregon State Legislature's  
18 website at <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3047>.

19 9. Attached hereto as Exhibit 8 is a true and correct copy of the Staff Measure  
20 Summary of 2021 HB 3047 for the Senate Committee on Judiciary and Ballot Measure 110  
21 Implementation, which I caused to be downloaded from the Oregon State Legislature's website  
22 at <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Analysis/HB3047>.

23 10. Attached hereto as Exhibit 9 is a true and correct copy of the Staff Measure  
24 Summary of 2021 HB 3047 for the House Committee on Judiciary, which I caused to be  
25 downloaded from the Oregon State Legislature's website at  
26

1 <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Analysis/HB3047>.

2 11. Attached hereto as Exhibit 10 is a true and correct copy of the testimony of  
3 Kimberly McCullough, Legislative Director Oregon Department of Justice, which I caused to be  
4 downloaded from the Oregon State Legislature's website at

5 <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Testimony/HB3047>.

6 12. Attached hereto as Exhibit 11 is a true and correct copy of the testimony of State  
7 Representative Janelle Bynum dated March 2, 2021, which I caused to be downloaded from the  
8 Oregon State Legislature's website at

9 <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Testimony/HB3047>.

10 13. Attached hereto as Exhibit 12 is a true and correct copy of the Enrolled version of  
11 2021 House Bill 3047, which I caused to be downloaded from the Oregon State Legislature's  
12 website at

13 <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3047/Enrolled>.

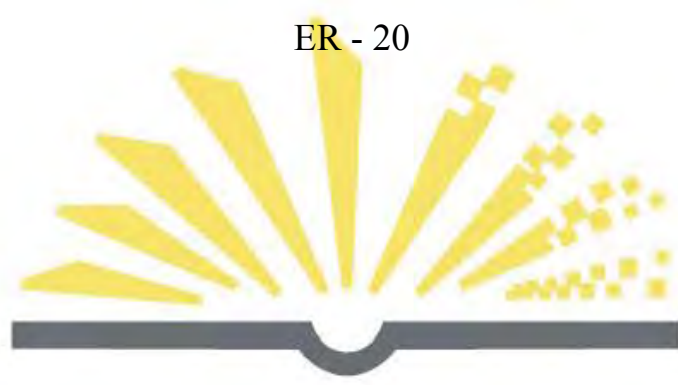
14 14. Attached hereto as Exhibit 13 is a true and correct copy of an article from OPB  
15 dated August 11, 2021, which I caused to be downloaded from OPB's website at

16 [https://www.opb.org/article/2021/08/11/despite-calls-to-hear-from-students-and-staff-newberg-](https://www.opb.org/article/2021/08/11/despite-calls-to-hear-from-students-and-staff-newberg-school-board-approves-ban-on-pride-and-black-lives-matter-flags/)  
17 [school-board-approves-ban-on-pride-and-black-lives-matter-flags/](https://www.opb.org/article/2021/08/11/despite-calls-to-hear-from-students-and-staff-newberg-school-board-approves-ban-on-pride-and-black-lives-matter-flags/).

18  
19 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST  
20 OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE  
21 AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

22 Dated October 28, 2021.

23  
24 s/ Clifford S. Davidson  
Clifford S. Davidson



# NEWBERG

## PUBLIC SCHOOLS

INSPIRE. INNOVATE. SUCCEED.

SEPTEMBER 28, 2021

BOARD OF DIRECTORS

REGULAR MEETING

7:00 PM

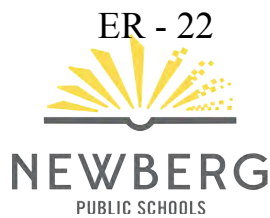
WORK SESSION

8:00 PM

Newberg School District Board Room · 714 E 6<sup>th</sup> St. · Newberg, Oregon 97132

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Newberg School District 29J • September 28, 2021  
Regular Board Meeting • 7:00 PM      Work Session • 8:00 PM

---

The Board of Directors of the Newberg School District 29J will meet on Tuesday, September 28, 2021 at 7:00 pm for a Regular Board Meeting and at 8:00 pm for a Work Session via Zoom conference call to discuss or take action on minutes, policy, and other business items. No public comments will be received. Business and discussion items may include:

- I. Call to Order ..... 7:00 pm
- II. Flag Salute ..... 7:05 pm
- III. Review Agenda (Chair David Brown)..... 7:07 pm
- IV. Old Business
  - a. Rescind Motion 28 and Amend Already Adopted Motion 13 (Vice-Chair Brian Shannon) ..... 7:10 pm
- V. Policy
  - a. Approval of Policy GBG Staff Participation in Political Activities/Ensuring Safe Environments to Learn Policy – Second Read (Vice-Chair Shannon) ..... 7:15 pm
- VI. New Business
  - a. Approve OSBA Nomination to Legislative Policy Committee (Chair Brown) ..... 7:35 pm
  - b. Approve Cell Tower Lease Agreement – Amendment #2 (Nikki Fowler) ..... 7:42 pm
  - c. Approve Amendments to Bank Signatories Designations (Nikki Fowler) ..... 7:50 pm
- VII. Work Session Discussions
  - a. Public Comments Procedure ..... 8:00 pm
  - b. Meetings in October: In-Person or Zoom ..... 8:12 pm
  - c. Pronouns ..... 8:24 pm
  - d. Board Meeting Efficiency..... 8:36 pm
  - e. All Students Are Important..... 8:48 pm
- VIII. Adjourn Regular Session..... 9:00 pm

**To listen to the meeting, call one of these numbers and follow the prompts:**  
1-253-215-8782 or 1-301-715-8592 **Meeting ID: 860 9689 6015; Passcode: 228804**  
**Or login via Zoom, using Meeting ID: 860 9689 6015; Password: 228804**  
<https://us02web.zoom.us/j/86096896015?pwd=OFo4WHB1Zjh1STFRReW8rMml2dys4UT09>

*Newberg School District is an equal opportunity educator and employer.  
Persons having questions about or requests for special needs and accommodations should contact the Board Secretary;  
Phone: 503-554-5036; Newberg School District, 714 East Sixth Street, Newberg, Oregon.*

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Posted: September 10, 2021



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## Newberg School District 29J

### Board Meeting Date: September 28, 2021

ITEM: Rescind Motion 28 and Amend Already Adopted Motion 13

PRESENTER: Vice-Chair Brian Shannon

ACTION

#### BACKGROUND:

At the September 1, 2021 special meeting, the Board tabled Motion 28: To rescind Motion 13 from the August 10, 2021, Board meeting including a directive to the Superintendent to remove all Black Lives Matter (BLM) and Pride displays from District facilities and to refer the political signs ban to the Policy Committee for policy development. Motion 28 was moved by Director Piros and seconded by Brandy Penner.

Motion 29 to table the motion was moved by Vice-Chair Brian Shannon and seconded by Director Trevor DeHart. The reason given for the motion to table was so that the rescinding of the directive to the Superintendent in Motion 13 could be timed with the adoption of the policy developed by the Policy Committee.

By convening the Policy Committee on September 9, 2021, to discuss and recommend Policy GBG to the Board in a first read, the Board already acted on a portion of Motion 13 that states:

*"to direct the Policy Committee to draft policy language prohibiting the display of political signs, flags, apparel, buttons, and placards, and all other modes of display from District facilities, with the sole exception of the American flag and the Oregon state flag, with exemptions as it sees proper. The language contained in this directive shall only apply to District staff and faculty while in the performance of their official duties as District employees"*

This action occurred while Motion 28 was still on the table for future decision. To clear up the procedural history for these series of motions and actions by the Board, the Board Secretary recommends the Board to first address the tabled Motion 28 by rescinding it to nullify and remove it from the table. The reason for rescinding Motion 28 rather than amending it is because any amendment to Motion 28 would still require an extra step to amend the previously adopted to Motion 13.

After Motion 28 is cleared from the table, then the Board may make another motion to amend the previously adopted Motion 13 to remove *only* the directive to the Superintendent while allowing the recommended policy language and referral to the policy committee to still stand since that action already occurred. No other language needs to be changed in Motion 13 because the development of the language occurred under the actions and recommendations of the Policy Committee.

Once the procedural items described above are addressed, amended, and cleared from the table the Board may proceed with deliberations and action on the Policy GBG in the second read that resulted from the actions initiated by Motion 13.

Please see the recommended actions and motions below.

---

RECOMMENDATION:

At the September 28, 2021, Board meeting, the Board Chair opens the previously tabled Motion 28 from September 1, 2021, for discussion so the Board may make the following motions:

MOTION #1: Move that the Newberg School District Board of Directors rescind the tabled Motion 28 to rescind Motion 13 from the August 10, 2021, Board meeting including a directive to the Superintendent to remove all Black Lives Matter (BLM) and Pride displays from District facilities and to refer the political signs ban to the Policy Committee for policy development.

MOTION #2: Move that the Newberg School District Board of Directors amend Motion 13 previously adopted on August 10, 2021, to remove the language "direct the Superintendent to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, apparel, buttons, and all other modes of display, and all instances of the symbol known as the Pride flag from District facilities immediately, and" from the motion.



## Newberg School District 29J Board Meeting Date: September 28, 2021

ITEM: Policy GBG: Staff Participation in Political Activities/Ensuring Safe  
Environments to Learn (Second Read) ACTION

PRESENTER: Vice-Chair Brian Shannon

---

### BACKGROUND:

The Policy Committee met with Spencer Lewis from Oregon School Board Association (OSBA) on Thursday, September 9, 2021. Amendments were made to OSBS Sample Policy GBG: Staff Participation in Political Activities to include language under the heading "Ensuring Safe Environments to Learn" along with "Notes and Exceptions". The proposal for the policy has been discussed by the Policy Committee and had a First Read at the September 14, 2021 School Board meeting.

The Policy is attached and presented for approval in the second read.

---

RECOMMENDATION: Move that the Newberg School District Board of Directors approve Policy GBG: Staff Participation in Political Activities as presented.

## Newberg School District 29J

Code: **GBG**  
 Adopted:

### **Staff Participation in Political Activities**

Employees may exercise their right to participate fully in affairs of public interest on a local, county, state and national level on the same basis as any community member in a comparable position in public or private employment and within the law.

All district employees are privileged within the limitations imposed by state and federal laws and regulations to choose any side of a particular issue and to support their viewpoints as they desire by vote, discussion or persuading others. Such discussion and persuasion, however, will not be carried on during the performance of district duties, except in open discussion during classroom lessons that consider various candidates for a particular office or various sides of a particular political or civil issue.

On all controversial issues, employees must designate that the viewpoints they represent on the issues are personal and are not to be interpreted as the district's official viewpoint.

No employee will use district facilities, equipment or supplies in connection with his/her political activities, nor will he/she use any time during the work day for such political activities.

### **Ensuring Safe Environments to Learn**

No district employee shall, while acting within the scope of their employment, either during school hours, or inside their physical area of responsibility at a school (such as a classroom, meeting room, desk area) hang, post, erect, or otherwise display ( hereafter "display") any posters, signs, flags, banners, pictures or other digital or physical image that depicts support or opposition relating to a political, quasi-political, or controversial topic.

For purposes of this policy a controversial topic shall be defined as one that a professional educator could reasonably understand to have students on more than one side of said issue. For purposes of this policy a political or quasi-political topic includes contemporary issues being debated in the local, state or national political climate.

Any person concerned with a particular Display should first notify the District employee believed to be responsible for the Display. Alternatively, the concerned person may file a complaint with a supervisor, school principal or the principal's designee pursuant to District Policy.

### **Notes and Exceptions:**

\* This policy does not restrict in any way students' First Amendment rights, nor change Policy IB or IGAC.

\* This policy does not restrict in any way District employees First Amendment rights when not speaking in their official capacity, nor while not on the job or if they are not using a forum provided exclusively to

them as an employee, or otherwise speaking on behalf of the District.

\* This policy does not limit, nor apply to communications, nor the free exchange of ideas during the course of approved educational events or exploration of approved curriculum.

\* Official district billboards in school offices, and union materials covered by collective bargaining agreements and are expressly exempt from this policy.

\* The flags of the United States of America and the State of Oregon are not prohibited by this policy.

END OF POLICY

---

**Legal Reference(s):**

[ORS Chapter 244](#)

[ORS 260.432](#)

OR. CONST., art. XV, § 8.

Johnson v. Poway Unified Sch. Dist., 658 F.3d 954 (9th Cir. 2011)

Downs v. LA Unified, 228 F.3d 1003 (9th Cir. 2000)

<https://katu.com/news/local/newberg-students-teachers-rally-in-support-of-rescinding-flag-ban>

KATU Staff

4 min read

## Newberg board votes to keep educators from displaying Black Lives Matter, Pride flags



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Protesters rally near Newberg School District headquarters Tuesday evening, Sept. 28, 2021. They want the school board to rescind its ban on political signs, including Pride and Black Lives Matters flags. (Allison Mechanic/KATU)

NEWBERG, Ore. — In a 4-3 vote Tuesday night, the Newberg School Board approved a policy that divided community members outside of the classroom.

Conservative board members Chair Dave Brown, Vice-Chair Brian Shannon, Director Trevor DeHart and Director Renee Powell all agreed to pass the policy that keeps educators from displaying “political, quasi-political or controversial” signs such as Black Lives Matter and Pride flags.

Those in favor of the policy say it will help all students.

"We are just destroying one another. I've sat with staff on both sides and sat with students and parents on both sides. It's just chasing division," said Powell. "We are supposed to be here for all children and to make all children feel safe and welcome, and by lifting one group or several groups over another, that's not welcoming and safe."

Three board members disagreed with the decision. Before the meeting, close to 100 people came out to rally against the policy. It was organized by the Newberg Education Association, and parents, students, business owners and educators from all over Oregon came out to demand the school board rescind a new ban on political signs, including Pride and Black Lives Matter flags.

Teachers and educators from around the state shared how they thought the ban would hurt students more than help them.

"It's really hard and heartbreaking to think that our students would be thought of as less than anything else," said Jennifer Schneider, Newberg Education Association president through tears. "Every student that walks through our doors deserves our best every day and they deserve to know that they are welcome and loved for who they are no matter where they come from, or what they look like, no matter how they identify."

Other community members like business owners joined the rally fearing that a ban will also impact the city of Newberg as a whole.

"Racism and bigotry is a thing of the past and it's not going to bring economic value to our city ," said Jeremy Carroll, owner of Pollinate Flowers. "This needs to be remembered that this is the four members of the school board, this does not represent Newberg and the values that the town has."

When the policy was first introduced, the Chehalem Valley Chamber of Commerce says they began getting calls and emails from people all over the state threatening to boycott the city. Now with the policy adopted, they fear those threats will become a reality.

Following the board's vote, the Newberg Education Association took to Facebook to share its thoughts.



Its statement reads:

*We are extremely disappointed that the 4 member Board majority were unwilling tonight to continue the culture of collaboration and look at any policy change in a superintendent standing committee. It's clear their personal politics are a stronger than an real desire to come together as a school community.*

*We will continue on our legal path to keep these board members in check. In addition, we have endorsed the recall of Board member Brian Shannon. We cannot let this group of 4 impose their own political agenda, erode our rights, and strip our support of our students. Our educators are united in their goal to create classrooms where students can walk in and feel like they belong. We are more committed than ever to this goal.*

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 <https://www.opb.org/article/2021/09/29/newberg-school-board-political-symbols-blm-lgbtq-pride/>

 Meerah Powell

 5 min read

# Newberg school board officially approves policy banning political symbols

## Education

### **The policy prohibits district employees from displaying any sort of political or controversial imagery.**

The Newberg school board voted Tuesday night to approve a policy that bans district employees from displaying any sort of political or controversial symbols or images.

The board had voted to specifically ban Black Lives Matter and Pride flags at a meeting last month, but it rescinded that motion during Tuesday's meeting. The board majority instead opted for an official policy; that's broad enough to include bans on specific symbols and signs, such as support for Black Lives Matter or LGBTQ pride.

"We need to get moving back towards education," said Board Chair Dave Brown, who joined the majority in a 4-3 vote in favor of the policy. "We've been derailed for quite a while."



The Newberg school board meets Sept. 28, 2021, to discuss a policy which would ban district employees from displaying any sort of political or controversial imagery.

### *Zoom / OPB*

Pushback over the policy and related bans had heightened in the past few weeks including a tort claim from the Newberg Education Association — Newberg’s teachers union — a statement from the Oregon House Democratic Caucus and a tweet from the ACLU.

Racist incidents have also flared at the school district recently, including a staff member who was terminated for showing up at Mabel Rush Elementary in Blackface. In another incident, the Newberg Graphic reported that a Newberg High School student was involved in a “slave trade” group message on Snapchat.

Director Rebecca Piros put forth an alternative to the broad ban on political speech. Her motion called for the board to create a committee of teachers and school board members that would meet for six weeks to discuss the underlying problems that are spurring the policy. That motion failed.

“I think we’ve spent way more oxygen on this issue than we should have already,” Vice Chair Brian Shannon said. “I don’t want to spend five, six more minutes on this issue, let alone six more weeks.”

Shannon added: “This policy is so innocuous. It just says that teachers can’t display political symbols at work while they’re on school time. That should not be controversial.”

Director Brandy Penner, along with Piro and Director Ines Peña, were in a minority voting against the policy. Penner called Shannon’s statements a “ridiculous attempt at pretending this is nothing.”

“Maybe it is nothing to you as a white, privileged male,” Penner said. “But, it’s a really big deal to a lot of our community, and a lot of our staff, and a lot of our students.”

Tuesday’s board meeting did not include an opportunity for public comment, though the school board listened to testimony last week.

Prohibiting support for underrepresented groups in the forms of signs or posters is contrary to recent state efforts looking to increase support for students.

Newberg’s policy does not prohibit the American flag or Oregon’s state flag.

Newberg Superintendent Joe Morelock said the policy could be tricky to implement.

The policy will work with the school district’s existing complaint procedure. Depending on the type of complaint — it could go through specific personnel and potentially up to the superintendent and the board.

“I think the difficulty is that we’re going to have different people in different buildings, different leaders who will be taking these complaints, and I think one of the biggest challenges is for us to have consistency across all the buildings about what’s OK and what’s not OK,” Morelock said.

“I think that one of the hardest things for us will be defining what a controversial subject is for some and not others. It’ll be very, very interesting to see what people come up with when

they decide they're going to make a complaint.”

Morelock said he could see this policy resulting in people complaining about specific people, whether it's staff members lodging complaints against colleagues or students complaining about staff.

“This is going to be essentially reduced to complaint procedure after complaint procedure,” he said. “I think that's going to be one of our biggest challenges.”

Penner, one of the board members to vote against the policy, questioned its legality — and its reasoning.

“We know that legally this policy is a wreck when it comes to any kind of actual putting it into practice,” she said. “It's not even a professional document, let alone a policy that is supposed to govern an employer of 500 people.”

Penner said early on in the meeting that the majority of the board had already made its choice, referencing the four members who had voted at the August board meeting in favor of a ban on Black Lives Matter and LGBTQ pride flags.

“It's going to continue to intensify this divide in our community, and that's the point,” she said. “Clearly after the last vote, you four are not at all interested in bringing this community together.”

The Newberg Education Association, the teachers union which recently filed a tort claim, also criticized the policy approved by the board majority, Tuesday night.

“It's clear their personal politics are stronger than any real desire to come together as a school community,” the NEA said in a statement. “We will continue on our legal path to keep these board members in check.”

The union said it has endorsed an effort to recall the board's vice chair, Brian Shannon.

“We cannot let this group of four impose their own political agenda, erode our rights, and strip our support of our students,” the NEA said. “Our educators are united in their goal to create

classrooms where students can walk in and feel like they belong. We are more committed than ever to this goal.”

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# Oregon school board bans Pride and Black Lives Matter symbols in the classroom

By [Timothy Bella](#)

September 29, 2021 at 10:12 a.m. EDT



An Oregon school board on Tuesday voted to ban educators from displaying Pride flags, Black Lives Matter symbols or other emblems in the classroom that are considered “political, quasi-political or controversial,” despite pushback from teachers, lawmakers and residents.

The conservative majority on the school board in Newberg voted 4 to 3 to adopt a policy that has attracted national attention, criticism and protests in the weeks since it was introduced. The decision in suburban Portland follows a pair of recent racist incidents at Newberg Public Schools. In one of them, a staff member [showed up for work in blackface](#) in an apparent protest of the district’s [coronavirus](#) vaccine mandate for employees and was subsequently fired.

The policy initially explicitly banned Pride and BLM symbols in all district buildings, but it was amended to broaden the language following a public outcry and concerns surrounding potential litigation. The ban on displaying such symbols in the classroom has been condemned by the Newberg City Council and Oregon Democrats, and the Oregon State Board of Education has called on the school board to reverse course.

Brian Shannon, the Newberg School Board’s vice chairman, introduced the measure over the summer. He said in the Tuesday evening meeting that the policy championed and adopted by him and his conservative colleagues is “very straightforward” and “shouldn’t be controversial.”

“We don’t pay our teachers to push their political views on our students. That’s not their place,” Shannon said. “Their place is to teach the approved curriculum, and that’s all this policy does, is ensure that’s happening in our schools.”

The policy was denounced by the board’s three liberal members, who accused the conservative majority of passing a measure that the community does not want.

“I think the point of this is to show that you are trying to sow division with extremist views and you have no interest in listening to the community,” school board member Brandy Penner said in the meeting.

Neither the school board nor Newberg Public Schools Superintendent Joe Morelock immediately responded to requests for comment early Wednesday. The Newberg Education Association, a union representing 280 educators and staff in the district, wrote in a [statement](#) that it is “extremely disappointed” over the decision from the conservative majority.

“It’s clear their personal politics are stronger than any real desire to come together as a school community,” the group said on Facebook. “We cannot let this group of 4 impose their own political agenda, erode our rights, and strip our support of our students. Our educators are united in their goal to create classrooms where students can walk in and feel like they belong.”

The board's decision comes at a time when Newberg, a city of 25,000 in Oregon's wine country, has been embroiled in state and national culture wars over free speech, racism and vaccinations.

A staff member at Mabel Rush Elementary School, identified as Lauren Pefferle, showed up to work this month dressed as Rosa Parks with her face darkened with dye to protest a vaccination mandate for all public school employees in Oregon. Gov. Kate Brown (D) announced last month that all teachers, staff and volunteers in the state's public schools had to be fully vaccinated by Oct. 18. Pefferle was fired over the blackface incident, according to the Newberg Graphic.

At least one student at Newberg High School has been linked to a Snapchat group called "Slave Trade," the Graphic reported, where teenagers nationwide share racist, homophobic and violent messages. The Snapchat group sometimes specifically targets Black students.

Shannon introduced in July the explicit ban in the classroom of political signs and flags, such as those with Pride and BLM symbols. The school board initially voted on Aug. 10 to ban those specific symbols in the classroom. Shannon told the Oregonian that Pride flags and banners were to be included in the ban due to conversations he said he has had with a few Newberg families who don't "agree with the gender ideology that flag represents."

The initial vote drew immediate backlash from community members, sparking peaceful protests from the LGBTQ and Black communities. The news got the attention of Rep. Alexandria Ocasio-Cortez (D-N.Y.), who visited with Newberg advocates while she was on vacation.

The community blowback led the Newberg School Board to alter the language of the ban on Sept. 1, removing the specific mentions of Pride and BLM.

Opponents of the ban, who have said the language specifically targeting groups of people was "illegal," say the policy has helped embolden racists. At a demonstration Sunday, BLM supporters protesting the school board's policy clashed with some members of the Proud Boys, a far-right group that has endorsed violence, according to the Portland Tribune.

At Tuesday's meeting, Penner indicated she is disgusted over a vote that she suggested had already been decided weeks earlier by the conservative majority.

"This is not a functioning business meeting," Penner said. "This is an after-party of four members, so I say let's just vote — get it over with." She added, "It's going to be our community, staff and students who are left to fight this."

Renee Powell, one of the conservative members on the school board, said that the policy would improve the lives of students.

"We are just destroying one another," Powell said. "We are supposed to be here for all children and to make all children feel safe and welcome, and by lifting one group or several groups over another, that's not welcoming and safe."

But critics remain upset about what the adopted policy will mean for the school district. Robert Till, who is gay and a sophomore at Newberg High School, told the Associated Press that he is embarrassed to live in the city because of the ban.

"A simple pride or BLM flag in a classroom shows the love and acceptance that we need," Till said. "Pride flags can literally save someone's life. and you're just going to take that away?"



**Read more:**

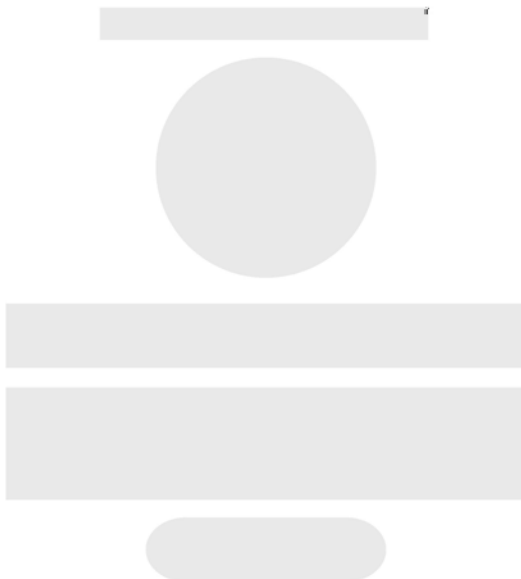
[Proud Boys supporter pleads guilty to threatening Sen. Rafael Warnock: ‘Dead men can’t pass laws’](#)

[N.C. hospital system fires about 175 workers in one of the largest-ever mass terminations due to a vaccine mandate](#)

By [Timothy Bella](#)

Timothy Bella is a staff writer and editor for the General Assignment team, focusing on national news. His work has appeared in outlets such as Esquire, the Atlantic, New York magazine and the Undefeated. [Twitter](#)

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Published on *Newberg Oregon School District* (<https://www.newberg.k12.or.us>)

## School Board



[1]

The Newberg School Board is responsible for providing a quality educational program for about 5,000 District students. The board's main job is to establish District policy. Board members serve four-year terms without pay.

The Board hires the superintendent, who is responsible to carry out Board policies, provide educational leadership and manage the District's budget and staff.

### School Board Meetings

The Newberg School Board usually meets at 7:00 p.m. on the second and fourth Tuesday of each month for a regular business meeting. The specific dates [can be found here](#) [2]. Business meetings and work sessions are held at the Newberg School District Office, 714 East 6th Street, Newberg, Oregon. All meetings are open to the public, except for executive sessions as authorized by law. Time is set aside at the business meeting for public comment.

- [School Board Meeting Agendas and Minutes](#) [3]

### Meet our School Board

#### [Trevor DeHart](#) [4]

Director Zone 1  
Elected in May 2021  
503-476-2636

#### [Brandy Penner](#) [5]

Director Zone 2  
Appointed in 2017  
503-538-6923

#### [Rebecca Piro](#) [6]

Director Zone 3  
Appointed in 2018  
503-310-4885

#### [Ines Peña](#) [7]

Director Zone 4  
Appointed January 2019  
503-550-5981

#### [Renee Powell](#) [8]

Director Zone 5  
Elected in May 2021  
971-409-5792

#### [Dave Brown](#) [9]

Board Chair, Director Zone 6  
Elected in 2019  
503-888-6365

#### [Brian Shannon](#) [10]

Board Vice Chair, Director Zone 7  
Elected in 2019  
503-476-1393

### Board Secretary

[Jennifer Nelson](#) [11] 503-554-5036

### Contacting a School Board Member

To get in touch with any Director, you may contact him/her directly or contact School Board Secretary at 503-554-5036. The entire Board can be reached at [boardmembers@newberg.k12.or.us](mailto:boardmembers@newberg.k12.or.us) [12].

### Mailing Address for the Board

Board of Directors  
Newberg School District 29J  
714 East 6th St  
Newberg, Oregon 97132

### DISCLAIMER for All Communications with District Staff and Board Members:

*The Board believes that community participation in school affairs is essential if the school district and the community are to maintain mutual confidence and respect and work together to improve the quality of education for students.*

*Citizens are encouraged to express their ideas, concerns and judgments through communication with District staff and Board members.*



## Newberg School District 29J

Code: BBD  
Adopted: 12/09/19

### Board Member Removal from Office

The Board shall declare the office of a director vacant upon any of the following:

1. The death or resignation of an incumbent;
2. When an incumbent ceases to be a resident of the district;
3. When an incumbent ceases to discharge the duties of office for two consecutive months unless prevented by sickness or unavoidable cause;
4. When an incumbent ceases to discharge the duties of office for four consecutive months for any reason;
5. When an incumbent is removed from office by judgment of any court;
6. When an incumbent has been recalled from office by district voters;

END OF POLICY

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**Legal Reference(s):**

[ORS 249.865 to -249.877](#)

[ORS 332.030](#)

[ORS 408.240](#)

 <https://www.opb.org/article/2021/08/11/despite-calls-to-hear-from-students-and-staff-newberg-...>

 Elizabeth Miller

 7 min read

## Despite calls to hear from students and staff, Newberg school board approves ban on Pride and Black Lives Matter flags

When students in Newberg Public Schools show up for the first day of school next month, they may not see Pride flags, or flags reading “Black Lives Matter.”

The school board voted Tuesday evening, four to three, to enact a ban on those flags, and any broadly “political” signs, clothing and other items, with the board’s three-member policy committee set to outline what constitutes “political.”

This action goes against recent state efforts to highlight support for students, including the Oregon Department of Education’s Black Lives Matter October 2020 resolution and recent efforts to help LGBTQ+ students. Supporters of the flags said they made students feel seen, help students being bullied, while supporters of the board’s vote said the signs were “divisive,” and that signs don’t make people feel safe.

Discussion and votes on two other related topics, drafting “replacement language” on the district’s new anti-racism policy and rescinding the district’s “Every Student Belongs” policy, was pushed to the district’s next board meeting - likely a special meeting later this month. If the board votes to roll back “Every Student Belongs,” the district would be in violation of state standards.

According to board secretary Jenn Nelson, there were over 90 public comments. The school board only heard 31 before ending the public comment portion of the evening.



Board chair Dave Brown said the board received over 500 emails ahead of the meeting. In his report, he said he was not racist, and that the district needs to support “all” students.

“It still goes back to the fact that we have a lot of kids that are impacted by this positively or negatively,” Brown said. “As a school board, it’s our job to make decisions that are going to be there for every single kid at Newberg High School, not just the kids that are represented in just one group - it has to be all kids.”

Board members, including Ines Peña, asked for more student input before moving forward with the motion.

“The quality of some of the stories that we heard should count more than just the number of emails that we received,” Peña said. “And I feel like that’s not being heard, the students are not being heard.”



The Newberg school board meets via Zoom on August 10, 2021. The board voted to ban Black Lives Matter and Pride flags districtwide.

*Screengrab / OPB*

In the weeks since the board's last meeting, state legislators have come out asking members of the school board to rethink the focus on banning flags and rolling back policies.

So have staff. Joshua Reid, a Newberg schools counselor, said the district's 16 counselors signed a letter asking the board to vote "no" on Tuesday's agenda items. During Tuesday's board meeting, Reid shared stories he heard from students, including students who had been rejected by their families and a Black student who was verbally and physically harassed and followed home.

"When these students enter our schools, and see the symbols that we mean to communicate love and support and affirmation, they don't see propaganda or indoctrination or any ideology," Reid said. "They see a glimmer of hope that there can still be safe places and safe people in their schools."

Another school staff member, teacher Stacey Dalton, said the LGBTQ+ Pride and Black Lives Matter flags help students see themselves in school when they may not otherwise.

"They are messages of love and support," Dalton said. "White and or heteronormative students, the majority, see their own validation consistently in the curriculum Newberg School districts have adopted and therefore do not need extra messages of support."

The school board includes newly elected school board members Trevor DeHart and Renee Powell, both of whom supported the ban on flags and policy changes. Newberg parent Brandon Casey said Tuesday's agenda items were a direct result of the May 2021 election results.

"We voted for this school board to make sure BLM signs are not in classrooms," Casey said, before pledging to unenroll his two students from the district if masks are required in schools. Under a state rule, they are required, though board chair Brown said the mask discussion will continue at the next board meeting.

Thursday, the Oregon School Board Members of Color Caucus Executive Team sent a letter addressed to four of the seven board members, including DeHart and Powell, sharing "growing concern" with the district's planned actions.

The letter asked the board members to avoid actions “contrary to state and federal law” and consider the impact of the board’s actions on its community, including its students.

“The actions you are considering are sending a message of division and marginalization of students and educators who are part of your community,” according to the letter.

There were more public comments presented in support of the flags and policies, and in favor of postponing decisions on them, than comments in support of the board’s agenda items.

Those comments included one from Newberg student Melody.

“Banning these flags make me feel like I would not feel welcome, or safe, and I do not believe this is the right thing to do,” she said. “As a kid, I think it’s unfair to say kids should not be in this environment.”

Her comment was the only one from a current student shared at Tuesday’s meeting.

A motion to postpone the action item to allow for more feedback from staff and students failed.

“It being summer, we haven’t heard that much from our student population, and from our staff,” said board member Rebecca Piros. “It doesn’t hurt to keep it in place a little bit longer.”

Late into the board’s discussion, vice chair Brian Shannon created a new amendment to expand the motion to include forthcoming policy language prohibiting the display of political “apparel, buttons, placards and all modes of display,” with exemptions to the policy decided on by the policy committee. After facing questions of who the motion applies to and whether the motion will restrict free speech, Shannon added that this only applies to district staff and faculty while they’re performing their duties.

“The main goal of this is to get political symbols, and divisive symbols out of our schools so we can focus on the already difficult task of educating our students in the core subjects,” Shannon said.



At least one school board member, Peña, was wearing a Black Lives Matter shirt and a rainbow-colored headband. Peña is the only person of color on the board.

Shannon's late addition led to more comments and questions from a few board members, including what falls - and doesn't fall - under the motion.

"I'm not wearing a flag, but I do have a rainbow headband," Peña asked. "What does that mean?"

Shannon said the headband was OK, but not the shirt, under the amendment he created.



Families, staff, and community members marched in support of the LGBTQ+ community and Black Lives Matter ahead of a Newberg school board meeting August 10, 2021. The school board voted to ban Black Lives Matter and Pride flags.

*Courtesy of Joel Bock*

Newberg superintendent Joe Morelock said he will check with the district's lawyers before putting this motion into place.

"I won't be able to enforce it as it is until we've gone through a bunch of legal review," Morelock said.

Nationally and locally, conversations about equity in education have been ramping up for several months, becoming divisive as conservatives have challenged the movement.

Richard Arnold, a Newberg parent, asked how the conversation started in his district, where he said his daughter, who is transgender, was "mostly accepted by peers and friends."

“Was there a multitude of students that were talking about being threatened by identifications inside the classroom? Was there a teacher that was pushing their agenda on so many students, that parents were getting complained to?” Arnold asked.

“I mean, where did this all start?”

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

**Trevor DeHart, Renee Powell,  
Brian Shannon, and Dave Brown,**

Plaintiffs,

v.

**Debbie Tofte, Katherine Barnett,  
A.J. Schwanz, and Tamara Brookfield,**

Defendants.

Case No: 21YAM0001CV

**Defendant Tamara Brookfield’s Special  
Motion to Strike Under ORS 31.150  
and Joinder in Defendant Katherine  
Barnett’s Special Motion to Strike**

Defendant Tamara Brookfield joins in Defendant Katherine Barnett’s request for a 90-minute hearing. Official reporting services are not requested.

**CONFERRAL STATEMENT**

There is no conferral requirement for anti-SLAPP motions. *Bryant v. Recall for Lowell’s Future Comm.*, 286 Or App 691, 696 (2017). Still, counsel conferred on the substance of this motion by telephone on October 29, 2021, and were unable to reach agreement.

**JOINDER**

Brookfield joins Barnett’s Special Motion to Strike filed on October 28, 2021, and incorporates the arguments and evidence in that motion. This motion presents additional argument and evidence specific to Brookfield.

1 employer would offer him some equal-opportunity training. Brookfield Decl. ¶ 9. She  
2 simply “wanted him to understand how his policies were harming marginalized members of  
3 [her] community.” *Id.* In addition, since Shannon had campaigned on the strength of  
4 Selectron’s good name, she wanted to “ensure that they were aware of and able to  
5 participate in the public discussion of which they had become a part.” *Id.* ¶ 10. In sum, as  
6 she explains in her declaration:

7 My intent was to foster participation in a significant public discussion and to  
8 help Shannon understand the harmful effects of the policies he was  
9 promoting as a member of the Newberg School Board. My intent was not to  
harass, stalk, or injure anyone.

10 Brookfield Decl. ¶ 11. The Directors’ claim against Brookfield fails on this element, too.

11 4. *If HB 3047 permits the Directors to hold Brookfield liable, it is unconstitutional*  
12 *as applied to her speech.*

13 For the reasons above, the Directors’ HB 3047 claim fails. If there is any doubt  
14 about the construction of the statute, the Court should construe it to avoid the  
15 constitutional problems described below. *See* Barnett Brief at 11–13.

16 If the Court holds that the Directors can hold Brookfield liable under HB 3047,  
17 then the statute is unconstitutional as applied to her speech. This conclusion follows from  
18 *The Fla. Star v. B.J.F.*, in which Florida had attempted to impose civil liability for publishing  
19 the name of a victim of a sexual offense. 491 US 524, 526 (1989). The *Florida Star*, in  
20 violation of the statute, printed verbatim a police report containing B.J.F.’s first name. *Id.*  
21 at 527. The Supreme Court held that a state may not prohibit the publication of lawfully  
22 obtained truthful information unless necessary to “further a state interest of the highest  
23 order.” *Id.* at 533 (quotation marks omitted). And it held that protecting victims of sexual  
24 assault was not such an interest. *Id.* at 537–38.

25 This case is much easier than *Florida Star*. The Directors do not dispute that  
26 Brookfield’s post was truthful or that she came by her information lawfully. And protecting

1 politicians from their constituents’ attempts to hold them accountable is a much less  
 2 important state interest than protecting victims of sexual assault. Political speech lies at the  
 3 “core of the protection afforded by the First Amendment.” *McIntyre v. Ohio Elections*  
 4 *Comm’n*, 514 US 334, 346 (1995). “One of the prerogatives of American citizenship is  
 5 the right to criticize public men and measures—and that means not only informed and  
 6 responsible criticism but the freedom to speak foolishly and without moderation.”  
 7 *Baumgartner v. United States*, 322 US 665, 673–74 (1944). The First Amendment  
 8 affords the “broadest protection” to such expression. *Buckley v. Valeo*, 424 US 1, 14–15  
 9 (1976) (per curiam). If the First Amendment protected the speech in *Florida Star*, it much  
 10 more obviously protects Brookfield’s speech—and indeed the speech of all Defendants.  
 11 And thus if HB 3047 prohibits Defendants’ speech, it is unconstitutional as applied here.

12 But the Court need not reach that conclusion. As Barnett argues at pages 11–13 of  
 13 her brief, the Court should “simply construe the statute narrowly to avoid  
 14 unconstitutionality, as the Oregon legislature intended, and, therefore, hold that it has no  
 15 application to plaintiffs’ claim.”

## 16 CONCLUSION

17 For all these reasons, the Court should dismiss the Directors’ claim under ORS  
 18 31.150 and award Brookfield her attorney fees under ORS 31.152(3) and ORS 20.105.

19  
 20 Dated: November 1, 2021

PUBLIC ACCOUNTABILITY

21 By: /s/Athul K. Acharya

Athul K. Acharya (he/him)

OSB No. 152436

[athul@pubaccountability.org](mailto:athul@pubaccountability.org)

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26 Kelly Simon (she/her)

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**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL**

**Trevor DeHart, Renee Powell,  
Brian Shannon, and Dave Brown,**

Plaintiffs,

v.

**Debbie Tofte, Katherine Barnett,  
A.J. Schwanz, and Tamara Brookfield,**

Defendants.

Case No: 21YAM0001CV

**Declaration of Tamara Brookfield**

I, Tamara Brookfield, declare as follows:

1. I am over the age of 18 and a defendant in this action. Except as otherwise indicated, I make this declaration upon personal knowledge. If called upon to do so, I would testify truthfully as follows.

2. I am a parent of two children who attend school in the Newberg School District. I served in the military for 20 years: Fifteen in the Army Reserve and five in the 142nd Fighter Wing of the Oregon Air National Guard. While in the Air National Guard, I served as chief of its Equal Opportunity Office.

3. Plaintiff Brian Shannon is a member of the Newberg School Board.

4. The Newberg School Board recently enacted a policy banning expressions of support for Black Lives Matter and LGBTQ+ people. Shannon voted in favor of that policy.

1           5.     In connection with the debate around, passage of, and fallout from that  
2 policy, I joined a Facebook group called Newberg Equity in Education, which is  
3 abbreviated ‘NEEd.’


4           6.     Around August 17, 2021, another participant in the group, Caitlin Shockley,  
5 posted that Shannon worked at Selectron Technologies, a local technology company. She  
6 obtained that information from a website that Shannon created,  
7 <http://votebrianshannon.com/>, to promote his school-board election campaign. A true  
8 and correct copy of that website, as it appeared on October 26, 2021, is attached to this  
9 declaration as **Exhibit 1**. The relevant portion of that website is excerpted below:

10           Financial Advisor behind, I decided to pursue a  
11 career in technology, a field that I believe, more  
12 than any other, has the potential for the  
13 material improvement in the lives of mankind.  
14 Today, I am a Senior Project Manager at  
15 Selectron Technologies, where I work to  
16 implement software solutions that provide  
17  
18  
19

20           7.     After I saw Ms. Shockley’s post, I searched for “Selectron Technologies” on  
21 Google. A true and correct copy of the search responses as they appeared on October 27,  
22 2021, is attached to this declaration as **Exhibit 2**. They are materially identical to the  
23 results I saw when I searched after seeing Ms. Shockley’s post. In particular, the  
24 “knowledge panel” in the top right of the page, excerpted below, was identical and  
25 contained the telephone number for Selectron Technologies:  
26

# Selectron Technologies

[Website](#)[Directions](#)[Save](#)

4.9  7 Google reviews

Corporate office

**Address:** 12323 SW 66th Ave, Portland, OR 97223

**Hours:** Open · Closes 5PM ▼

**Phone:** (503) 443-1400

8. I copied the phone number from the Google search results, pasted it in the discussion on NEEd, and suggested that people call the number and “express [their] concerns about [Shannon’s] demonstrated behavior.” I asked that they “avoid hearsay.”

9. I posted Selectron Technologies’ phone number to the NEEd group for two reasons. First, I believed that Shannon would benefit from equal-opportunity training, and I hoped that his employer would provide it. I wanted him to understand how his policies were harming marginalized members of our community.

10. In addition, the Newberg School Board’s recent policies banning expressions of support for Black Lives Matter and LGBTQ+ people have garnered significant publicity at the local, state, and even national levels. Selectron Technologies is a significant local employer, and Shannon campaigned on the strength of their good name. I wanted to ensure that they were aware of and able to participate in the public discussion of which they had become a part.



1           11. My intent was to foster participation in a significant public discussion and to  
2 help Shannon understand the harmful effects of the policies he was promoting as a member  
3 of the Newberg School Board. My intent was not to harass, stalk, or injure anyone.

4           12. I did not know, and could not have known, that Shannon did not consent to  
5 my post. He had listed his employer both on his campaign website and on his public  
6 LinkedIn page. His employer publicly lists its phone number on Google. I did not know,  
7 and could not have known, that he did not want such information to be general  
8 knowledge, because he himself had made it general knowledge.

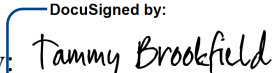
9           13. On October 1, 2021, I sent the Newberg School Board a letter informing  
10 them that I intended to file an equal-opportunity complaint with the Oregon Department  
11 of Education. A true and correct copy of that letter is attached to this declaration as  
12 **Exhibit 3**. It specifically discussed Shannon's discriminatory votes and statements as a  
13 member of the School Board. It also discussed the discriminatory votes and statements of  
14 each of the other plaintiffs.

15           14. Nearly nine weeks after my post—but only two weeks after I sent that  
16 letter—Plaintiffs filed this lawsuit against me.

17           15. Since Plaintiffs filed this lawsuit, I have felt reluctant to publicly discuss their  
18 conduct as School Board members. I have also felt reluctant to proceed with my complaint  
19 to the Oregon Department of Education, because I do not want to provoke further  
20 retaliatory actions from Plaintiffs.

21  
22           I hereby declare that the above statement is true to the best of my knowledge and  
23 belief, and that I understand it is made for use as evidence in court and is subject to penalty  
24 for perjury.

25 Dated: October 27, 2021

26 By:   
351278E1544543E  
Tamara Brookfield

# Exhibit 1

---

**BRIAN**

**SHANN  
ON**

*for school  
board*

I was born in 1982 in the small mountain town of Weed, CA, 45 minutes from the Oregon border. At 18 I attended the University of California, Davis, where I earned a Bachelor's Degree in History. It was also there that I met my beautiful wife, Samantha. While at school, I became active in politics, ultimately working my way up to serve as Director of the Team California Taxpayer's Voter Guide, a statewide election mailer which advocated on behalf of taxpayers. After graduation I worked as an Event and Distance Learning Coordinator at UC Davis before deciding to pursue a career as a Financial Advisor.



In 2013, a year which saw the birth of my first son Jack, as well as a personal bout with cancer, my wife and I decided to move to Oregon to be closer to her family. Having left my career as a Financial Advisor behind, I decided to pursue a career in technology, a field that I believe, more than any other, has the potential for the material improvement in the lives of mankind. Today, I am a Senior Project Manager at Selectron Technologies, where I work to implement software solutions that provide citizens better access to their local and state governments.



Photo: Sarah Morace Photography

## A VOICE FOR CHANGE

Our education system is broken, we all know it. State mandates and the absurd hyper-focus on standardized testing have tied the hands of well-meaning teachers and staff, preventing them from finding innovative ways to reach their students. Under the current system students are not children, they are commodities on an assembly line. They attend school not to learn, but to sit in a seat for the requisite number of hours so the District will get its tax dollars from the State. Meanwhile, our kids aren't even given adequate time to eat a proper lunch. We are better than this, and our schools can be better than this, but it will require all of us demanding bold, fundamental change to our school system.

We need to go back to the drawing board to design a humane, holistic approach to learning that puts the student at the center. There are other school systems across the country and around the world that have figured out approaches that deliver better results while costing less than we are spending now. Let's learn from these examples and implement reforms based on them to improve outcomes and

HOME

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---

demand the change that our children  
deserve. It is long overdue.

# Exhibit 2



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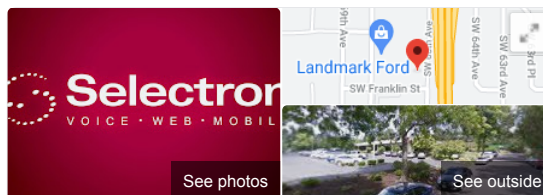
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Free and open company data on Nebraska (US) company SELECTRON TECHNOLOGIES, INC. (company number 10229659)

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## Selectron Technologies



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# Exhibit 3

October 1, 2021

Newberg School Board Members,

This letter is a follow up letter to my August 20<sup>th</sup> discrimination complaint letter sent to all the Newberg Board Members. I am starting a 2<sup>nd</sup> complaint letter to the Newberg School Board. The Equal Opportunity complaint letter dated August 20<sup>th</sup> to the Newberg School District Board was to start the complaint process. My complaint is that the Newberg School Board is intentionally instituting illegal policies with the purposes of discriminating against protected classes of individuals. The protected classes include race, color, gender, and sexual orientation. No one from the Newberg School Board contacted me to address my complaint in the required 30 days. This letter serves as my second complaint with a requirement to address my complaint in 30 days.

The Newberg School Board has acted in a manner with intentional discriminatory purpose towards students and teachers who have protected class populations of race, color, gender, and sexual orientation in the Newberg school by adopting policy "Ensuring Safe Environments" that Board Members Brown, Shannon, DeHart and Powell voted to approve on September 28, 2021. These decisions are in direct violation of:

1. The State of Oregon's anti-discrimination law (ORS 659.850)
2. Oregon Department of Education Rule (OAR [581-021-0045](#): Discrimination Prohibited)
3. Oregon Department of Education Black Lives Matter Resolution dated October 15, 2020

Additionally, the School Board Members voted to rescinded "All Students Belong/Every Student Belongs" which is a violation of the Oregon Educational state standards. The intent of this legislation was to protect students in the classroom from discrimination or harassment based on protected classes of race, color, gender, and sexual orientation. By rescinding it, the Newberg School Board leaves students, and staff vulnerable to further discrimination. Direct acts of discrimination have occurred recently at Newberg including a least one white student "trading" black students on Snapchat, racists slur and jokes on buses and most recently an instructional aid came in blackface to school.

These above discrimination violations occurred on 7/13/ 2021 and 8/10/2021 and 9/28/2201 during the Newberg School Board meetings when they voted to adopt a policy of no Black Lives Matter and Pride materials in schools, classroom, and staff clothing/accessories, including such items as flags, buttons etc. and later adopting "Ensuring Safe Schools" policy to try to get around legal prosecution by the NEA and ACLU of Oregon. They adopted "Ensuring Safe School" to continue to discriminate against marginalized students.

**Summary of discriminatory behavior of the board in late August and September: Since that time the Newberg School Board has acted with discriminatory intent by banning pride and support items for marginalized groups they: Illegally hired a lawyer who specializes in discrimination cases, directed the Superintendent to enforce an illegal policy, prioritized people who share the same discriminatory views to speak early and more often at public comment opportunities, and created a policy to try to get the same outcome as their initial illegal policy and directive. While this new policy verbiage is semantically different, it still achieves their goal of intentional institutional discrimination.**

Since my first complaint letter on August 20<sup>th</sup>, the Newberg School Board Members (specifically: Dave Brown, Trevor DeHart, Renee Powell and Brian Shannon) have continued to act with the intention to discriminate against protected classes of people by demonstrating the following behaviors:

- In numerous meetings, Board member Brian Shannon has intended to discriminate by banning support items for individuals of protected classes. He verbally stated numerous times specific requests to ban support items for Black and LGBTQ students.
- On 8/24 Newberg School Board members intentionally conspired to violate public meeting law by voting to bring on Tyler Smith, as their board lawyer. Tyler Smith is a lawyer who has expertise in representing those who act in intentionally discriminatory manners; he represented Sweet Cakes by Melissa, the bakery who refused to make a cake for a gay couple. This shows their intent to act in a discriminatory manner.
- On 9/9 policy meeting, Trevor DeHart and Brian Shannon are observed to try to immediately vote on the policy that discriminates against the BIPOC and LGBTQ students without getting input from students, teachers, the public and without the Legal Review recommended by the District Attorney during policy meeting.
- The Newberg School District Lawyers have continued to maintain that the policy is not legal. On 7/13/21, these four board members voted to direct the Superintendent to remove support items.
- Dave Brown, the Newberg School Board Chair acted intentionally to discriminate against protected classes of students and teachers by directing the Board Secretary in August to order his preferred speakers who are in favor of discriminating against protected classes of people the top of his list during public comment. Screen shots of his directives to the Secretary can be gained through FOIA. Many of the same people who have been against BLM and Pride support items have been allowed to speak numerous times, some of them live in other towns and states. This can be observed during a review of the several months of Newberg Public School Board Meetings which can be accessed online.

- In September the Chair met with the Secretary to organize the public speaker comments to make it look like there was balance between people supporting and against the support items. Most of the people not given the opportunity to speak were opposed to the ban of the pride items and discriminatory policy. This information can be gained by an FOIA.
- Around 9/13 it was brought to the attention of the Newberg School that at least one Newberg High School Student was participating in “slave trade” discussion. Additionally, an educational assistant came to student with Black Face. At no time, has Brown, Shannon, DeHart or Powell made a public statement to denounce these behaviors. In fact, during the 9/28 meeting DeHart intentionally expressed his concern for the mental health of the perpetrating student who was doing the “trading,” by saying he was concerned that student was suicidal. At no time did he express concern for the African American Students who were being “traded” or their mental health. Powell also mentioned her concern for the perpetrator.
- At the September 23<sup>rd</sup> meeting, all the students who spoke during public comments to the board said they wanted to keeping support items for the protected classes. Teachers, Counselors and School Psychologist have all reported that the support items for the protected classes of people are helpful.
- On September 28, Ines Pina asked to be called by her pronouns of “she and her” and not “you guys”. Shannon said he was not going to play that “pronoun game” with her and was very disrespectful towards her and her request.
- Brown, Shannon, DeHart and Powell say they have had many exchanges with constituents regarding this topic. No one from the School Board has contacted me regarding my complaint that was dated August 20<sup>th</sup> until September 30<sup>th</sup>. I was made aware that the complaint letters had been forwarded to Tyler Smith. He has not contacted me.
- This is just a small list of the ways the Newberg School Board has deliberately and intentionally worked to discriminate against the protected classes in the Newberg Schools. A full investigation will undoubtedly find even more evidence of discriminatory actions of the of the Newberg School Board (specifically: Brown, Shannon, DeHart and Powell).
- Evidence of the actions listed in this letter can be found on the Newberg School Board meeting agenda and YouTube public videos, including agendas, meeting notes and public board videos from August 2020, February 2021, and July 2021 to current videos and through FOIA requests.
- I am requesting that you rescind “Ensuring Safe Environments” policy and implement a policy that includes “Diversity, Equity and Inclusion” in its place. It should also include

items of support that are helpful and validating to marginalized and protected classes students and staff. Failure to write a legal and inclusive policy to my complaint in 30 days will result in the filing of my equal opportunity complaint with the Oregon Department of Education.

Tamara Brookfield



1 **V. APPLICATION OF THE DOXXING STATUTE TO TOFTE IS**  
 2 **UNCONSTITUTIONAL.**

3 As Barnett explained in her motion, in developing HB 3047, the Oregon  
 4 legislature sought to avoid unconstitutional restrictions on freedom of speech. Kimberly  
 5 McCullough, the Legislative Director at the Oregon Department of Justice, was part of  
 6 the work group that developed HB 3047. She told the Senate Judiciary Committee that  
 7 she and the group "worked hard to craft legislation which would provide a remedy to  
 8 victims of doxing while also navigating the free speech rights contained in the First  
 9 Amendment of the federal Constitution and Article I, section 8 of the Oregon  
 10 Constitution." Davidson Decl., Ex. 10.

11 Similarly, Aaron Knott, the Policy Director for the Multnomah County District  
 12 Attorney's Office and who served on the work group for HB 3047, testified that "a lot of  
 13 work has gone into this bill to make sure that it doesn't accidentally trod on free speech  
 14 \* \* \* ." Testimony of Aaron Knott, House Committee on Judiciary, House Subcommittee  
 15 on Equitable Policing (Mar. 1, 2021) (25:05 to 28:44), available at [https://invintus-client-](https://invintus-client-media.s3.amazonaws.com/4879615486/1c1648d33a96ff822ea4ad15ab101f2a635c22f9.mp4)  
 16 [media.s3.amazonaws.com/4879615486/1c1648d33a96ff822ea4ad15ab101f2a635c22f9.m](https://invintus-client-media.s3.amazonaws.com/4879615486/1c1648d33a96ff822ea4ad15ab101f2a635c22f9.mp4)  
 17 [p4](https://invintus-client-media.s3.amazonaws.com/4879615486/1c1648d33a96ff822ea4ad15ab101f2a635c22f9.mp4). He explained that "the State of Oregon has some of the strongest freedom of speech  
 18 protections in the country." *Id.* Accordingly, "the first part of this bill uses language that  
 19 is absolutely necessary to survive a constitutional challenge under \* \* \* *State v.*  
 20 *Robertson*, which is the Oregon Supreme Court's test." *Id.* He explained that freedom of  
 21 speech permits posting information online, and that:

22 "The only point where it becomes actionable is if by putting it online you  
 23 intend a constitutionally recognized harm. That means that you can put  
 somebody's personal information online for a number of different reasons,  
 you know even if you want to expose them to political speech, they're an



1 elected official and you think they need to hear from their constituents,  
2 that's fine. It's when you cross the line over into intending them a  
constitutionally recognized harm, something like \* \* \* harassment \* \* \* ."

3 *Id.*

4 As explained above, plaintiff's complaint arises directly out of Tofte's exercise of  
5 rights of free speech. Were HB 3047 to apply to Tofte's conduct, it would violate the  
6 First Amendment of the Federal Constitution and Article I, Section 8 of the Oregon  
7 Constitution. *Snyder*, 562 US at 451-52 ("Speech on matters of public concern \* \* \* is at  
8 the heart of the First Amendment's protection.") (internal quotations omitted).

9 However, this court need not determine the outermost reach of HB 3047. It  
10 should simply construe the statute narrowly to avoid unconstitutionality, as the Oregon  
11 legislature intended, and, therefore, hold that it has no application to plaintiffs' claim, as  
12 outlined above. To that end, the Oregon Supreme Court has explained,

13 "any judicial narrowing construction, adopted to address a statute's  
14 unconstitutional overbreadth, must keep faith with the legislature's policy  
15 choices, as reflected in the statute's words, and respect the legislature's  
responsibility in the first instance to enact laws that do not intrude on the  
constitutionally protected right of free speech."

16 *State v. Rangel*, 328 Or 294, 304 (1999). For the reasons above, a narrow interpretation of  
17 HB 3047 in this case would be consistent with the legislature's intent in crafting the bill  
18 to avoid conflict with the First Amendment.

19 However, if this court determines it cannot interpret HB 3047 narrowly to avoid  
20 plaintiffs' claim, then the newly enacted law is unconstitutional. HB 3047 has an obvious  
21 and foreseeable application to the content of speech, as it directly targets "disclosure" of  
22 specific information. *State v. Robertson*, 293 Or 402, 412 (1982). Because the  
23

1 proscribed means of causing the forbidden effects includes speech or writing, the law is  
2 unconstitutional under *Robertson*.

3       Where expressive conduct is involved, the legislative target must be clear and a  
4 legally permissible subject of regulation or prohibition, and the means chosen to deal  
5 with it must not spill over into interference with other expression. *Vannatta v. Keisling*,  
6 324 Or 514, 539 (1997) *overruled on other grounds by Matter of Validation Proceeding*  
7 *to Determine the Regularity & Legality of Multnomah Cty. Home Rule Charter Section*  
8 *11.60 & Implementing Ordinance No. 1243 Regulating Campaign Fin. & Disclosure*,  
9 366 Or 295 (2020).

10       In *State v. Johnson*, 345 Or 190 (2008), the Oregon Supreme Court determined  
11 that the criminal harassment statute was unconstitutional and overly broad because even  
12 though it aimed to address potentially forbidden results of speech (a *Robertson* category  
13 II analysis) – i.e., harassment, there was no requirement that the offender act violently or  
14 even offer to act violently, or that the hearer actually be put in fear of violence, or that  
15 violence be imminent. Thus, the Court determined that the statute extended to various  
16 kinds of expression that could not be punished. *Id.* at 196. The Court explained that  
17 "taunts intended and likely to produce a violent response are not limited to playgrounds  
18 and gang disputes. They extend to political, social, and economic confrontations that  
19 range from union picket lines to the protagonists on a host of divisive issues, and thus  
20 include a wide range of protected speech." *Id.* The Court further explained that  
21 "Harassment and annoyance are among common reactions to seeing or hearing gestures  
22 or words that one finds unpleasant. Words or gestures that cause only that kind of  
23 reaction, however, cannot be prohibited in a free society, even if the words or gestures

1 occur publicly and are insulting, abusive, or both." *Id.* The Court determined that the  
 2 statute therefore was overbroad and was unconstitutional. *Id.*

3 Here, the doxxing statute similarly is unconstitutional. Particularly here, where  
 4 plaintiffs seek an injunction and a prior restraint on Tofte's speech, plaintiffs seek to chill  
 5 and silence Tofte's protected free speech rights. Thus, it is unconstitutional both on its  
 6 face and as applied to Tofte.

### 7 ATTORNEY FEES

8 Defendant Tofte and all defendants are entitled to their attorney fees if they  
 9 prevail on their anti-SLAPP motions pursuant to ORS 31.152(3). Furthermore, given that  
 10 there is no objectively reasonable basis for asserting plaintiffs' claims against Tofte or  
 11 any other defendant, defendants give notice that they plan to seek attorney fees against  
 12 plaintiffs under ORS 20.105.

### 13 CONCLUSION

14 The anti-SLAPP statute applies to Plaintiffs' claim. Plaintiffs therefore must  
 15 support each element of their claim with admissible, *prima facie* evidence. If they fail to  
 16 do so, then the Court should enter judgment dismissing the Complaint without prejudice,  
 17 and award Tofte's attorney fees and costs upon application.

18 DATED this 1st day of November, 2021.

19 /s/ Shenoa Payne  
 Shenoa Payne (she/her), OSB No. 084392  
 20 **Shenoa Payne Attorney at Law PC**  
 735 SW First Ave, Ste 300  
 21 Portland, Oregon 97204  
 (503) 914-2500  
 22 [spayne@paynelawpdx.com](mailto:spayne@paynelawpdx.com)  
 Cooperating Attorney for Public  
 23 Accountability

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

|   |   |                                    |
|---|---|------------------------------------|
| TREVOR DEHART, RENEE POWELL,<br>BRIAN SHANNON, and DAVE BROWN,            | ) | Case No.: 21YAM0001CV              |
|   | ) |                                    |
| Plaintiffs,   | ) | <b>DECLARATION OF DEBBIE</b>       |
|   | ) | <b>TOFTE IN SUPPORT OF SPECIAL</b> |
| vs.   | ) | <b>MOTION TO STRIKE PURSUANT</b>   |
|   | ) | <b>TO ORS 31.150</b>               |
| DEBBIE TOFTE, KATHERINE BARNETT,<br>AJ SCHWANZ, and TAMARA<br>BROOKFIELD, | ) |                                    |
|   | ) |                                    |
| Defendants.   | ) |                                    |

---

I, Debbie Tofte, declare as follows:

1. I am over the age of 18 and a defendant in this action. Except as otherwise indicated, I make this declaration upon personal knowledge. If called upon to do so, I would testify truthfully as follows.
2. I am a sixth-grade humanities and drama teacher at the Chehalem Valley Middle School in the Newberg School District (NSD).
3. On or around August 10, 2021, the NSD enacted a policy barring educators like myself from displaying symbols of support for Black Lives Matter and the LGBTQ+ community. All four plaintiffs, including Trevor DeHart, voted in favor of the NSD ban. The NSD board meeting was live streamed and I watched plaintiffs vote for the NSD ban.

1           4.       I have a son who is a senior at Newberg High School in the NSD. After  
2 the NSD board enacted the above bans, my son came home from a choir function very  
3 upset because his friends who identify as part of the LGBTQ+ or BIPOC community  
4 expressed to him that the NSD ban made them feel like they didn't matter. I felt called to  
5 support students like my son's friends and oppose the NSD ban.

6           5.       In an effort to do so, I joined a Facebook group called Newberg Equity in  
7 Education or "NEEd." I joined NEEd out of a concern that the NSD ban would have a  
8 negative impact on students like my son's friends and continue to make them feel like  
9 they don't matter. I joined NEEd and voiced my concerns as a private citizen.

10          6.       NEED was created as a grassroots effort for likeminded people who came  
11 together to represent constituent voices that believed that the four NSD members that  
12 voted for the NSD ban did not represent their opinions and beliefs. Discussions in NEEd  
13 centered on opposition of the NSD ban, organization around how to oppose the NSD ban,  
14 providing information on how to appear at school board meetings and provide testimony,  
15 and how to get involved in community protesting. There was also debate within NEEd  
16 on the best public messaging related to opposition to the NSD bans.

17          7.       On August 17, 2021, shortly after the first NSD ban went into place, a  
18 NEEd discussion started regarding whether it was appropriate to boycott or avoid  
19 supporting businesses who employed the NSD board members who voted for the NSD  
20 ban. Many people, including myself, expressly stated that we opposed getting anyone  
21 fired from their jobs. I did express a desire to hold such board members accountable. By  
22 "accountable" I wanted the board members to change their minds as to their votes on the  
23 NSD ban. At most, I wanted people in their lives that they respected and that they might

1 listen to, to have discussions with them. Attached as Exhibit 1 is a true and correct copy  
2 of excerpts from the NEEed thread discussing this issue for which I commented or took  
3 part.

4 8. I had previously learned from another thread on NEEed that Trevor DeHart  
5 works at Lam Research. I looked up Lam Research on Google and found its publicly  
6 available website and its "Core values" page at [https://www.lamresearch.com/company/  
7 company-overview/#mission](https://www.lamresearch.com/company/company-overview/#mission). Lam Research's "Core Values" include "Inclusion &  
8 diversity," and "Mutual trust & respect." In my opinion, DeHart's demonstrated public  
9 behavior in voting for the NSD bans seriously conflicted with these "Core Values."

10 9. I posted the publicly available Lam Research website along with the  
11 information that I found on Lam Research's website on NEEed as part of the discussion  
12 thread in Exhibit 1. I did not share any contact information for Lam Research and I did  
13 not encourage anyone to contact Lam Research.

14 10. The fact that Trevor DeHart works at Lam Research is also publicly  
15 available information. Trevor DeHart lists Lam Research as his current employer on his  
16 publicly available LinkedIn page. I did not know and had no reasonable way of knowing  
17 that Trevor DeHart did not consent to the disclosure of his employer's identity, as that  
18 information is publicly available. Attached as Exhibit 2 is a true and correct copy of  
19 Trevor DeHart's LinkedIn page.

20 11. The reason that I posted the Lam Research publicly available website to  
21 the NEEed group was simply to discuss with others in NEEed what I perceived as a conflict  
22 between DeHart's public behavior and the core values of his employer. I provided this  
23 information as part of the larger discussion and debate in Exhibit 1 of whether we should

1 boycott businesses who employ NSD board members as part of our attempt to hold such  
2 NSD board members accountable as part of our opposition to the NSD ban, which had  
3 generated significant publicity in Newberg, Yamhill County, the State of Oregon, and  
4 nationally.

5 12. As I expressly stated in Exhibit 1, I did not want anyone to get fired from  
6 their jobs, including Trevor DeHart. I also had no intent to harass or cause anyone harm  
7 in posting the publicly available information from Lam Research's website in Exhibit 1.

8 **I hereby declare that the above statement is true to the best of my knowledge**  
9 **and belief, and that I understand it is made for use as evidence in court and is**  
10 **subject to penalty for perjury.**

11 DATED 10/31/2021.

12 DocuSigned by:  
13 *Debbie Tofte*  
14 21BD66016A544E1...  
15 Debbie Tofte

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1



Edit

# Newberg Equity in Education (NEEd)

Private group · 647 members



Invite



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Owen Lowe

August 17 · 🌐



I have hesitated to ask this but have thought long on it. I'd like to know where the 4 board members and their spouses work so that I can avoid giving them my business and letting their employer know why.

These people have negatively impacted my job and hurt my family. I think it's only fair to respond in this type of way.

[View insights](#)

175 post reach



Sarah Elizabeth, Amanda Lamb and 23 others · 23 Comments

Like

Comment

All Comments



Melanie Springer Mock

Have you seen the post (below) about Equity ForNewberg? That might help answer the question.

Like · Reply · 10w



Shelley Hendrick Thomas

I know Trevor's wife Larissa is a Farmers Insurance Agent in the area

Like · Reply · 10w

The comment Tonia Kaba Brammer is replying to has been deleted

Tofte Decl., Ex 1  
Page 1 of 4







1

Like · Reply · 10w



Tania Kehe Brammer

Renee Powell is on payroll for her husband's company Powell Built Homes/Powell Built Design & Construction

Like · Reply · 10w



Debbie Tofte

Key tenets for Lam Research, the employer of Trevor DeHart. This is their dedication to education. Read the last section, "Quality of Life" and you'll see just in that tidbit how DeHart's values conflict with his employers. <https://www.lamresearch.com/.../envir.../the-lam-foundation/>



LAMRESEARCH.COM

The Lam Foundation | ESG | Lam Research

Like · Reply · 10w · Edited



Debbie Tofte

Here are the Core Values of Lam Research:  
Achievement  
Agility  
Honesty & integrity  
-Inclusion & diversity. (WHAT? How does DeHart stand to work for these people?!)  
Innovation & continuous improvement  
Mutual trust & respect (AGAIN...WHAT? Does DeHart know this about his employer?!)  
Open communication.  
Ownership & accountability  
Teamwork. (He seriously can't know this. And he remains working for them. Someone should point these Core Values out to him. He needs to know this info! They seriously conflict). 😊

Like · Reply · 10w · Edited



Angie Spracher

Debbie Tofte Lam Research is like 3 blocks from my house. I'm thinking they may need to hear from a local community member.

Like · Reply · 10w



Sarah Luna

I think I remember someone saying Dave is coaching in Canby.

Like · Reply · 10w



Sarah Lebeda Moore

<https://pamplinmedia.com/.../460445-374489-brown-takes...>



PAMPLINMEDIA.COM

Brown takes over Canby girls tennis program

Like · Reply · 10w · Edited





1



Are we trying to get people fired from their jobs due to political engagement at this time?

It's one thing to protest their political actions and values, its another to go after their jobs.

I'm all for calling a scumbag a scumbag and protesting them and trying to get them unseated, but going directly after someone's (unrelated to politics) job for engaging in the political process sounds a lot like something this group would despise and stand against if the tables were turned.

I'm not completely caught up on the political details of this situation, but a no holds barred fight seems like a way to roll in the mud with the pigs, and the pigs always enjoy it.

Have to say my peace. This line of action seems like a way to end up in a place we wont be proud of.

Like · Reply · 10w · Edited



Owen Lowe  
Garret Lukens

I do NOT want them fired for their opinions and beliefs - just like I don't want to be fired for mine. I am merely seeking to not assist in financially supporting them. Unfortunately it appears they work at places where my boycott wouldn't be effective.

Like · Reply · 10w



Debbie Tofte  
Garret Lukens , I think what people are seeing is their political values are impacting every single employee in the Newberg School District. I don't want anyone to get fired, but I would like to see them held accountable for their actions, which are politically fueled in a role that should be one of objectivity. I think a many of Newberg staff feel they're creating a hostile work environment.

Like · Reply · 10w



Garret Lukens  
Debbie Tofte that sounds like a justification and defense of going after someone's job ("held accountable") because you perceive them as throwing the first punch.

Refer back to my first comment. I believe the phrase "They go low We go high" is known and holds weight around here.

I think the Trumpian era has eroded things so far that even handedness doesnt exist anymore.

Owen Lowe, totally reasonable, was just expressing some concerns.

Like · Reply · 10w





1



**GARRET LUKENS**

This is a very gray area of public vs private. That's why I couched my original question as having thought on it a long time. Folks in the public square are free to speak their opinions but that doesn't mean there won't be consequences. When people seek and hold public office, their words hold more sway and the consequences tend to match that level of impact.

I'm not out to destroy anyone's livelihood here, just let them know there are consequences (could be either positive or negative) to every word they speak and action they take.

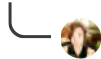
Like · Reply · 10w



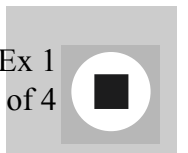
**Debbie Tofte**

Owen, thanks for the follow up. 👍

Like · Reply · 10w



Reply to Garret Lukens...





Home





My Network



Jobs



**Trevor DeHart** · 3rd  
Semiconductors Professional

-  Lam Research
-  Oregon State University

Dundee, Oregon, United States · [Contact info](#)

43 connections

[Message](#) [More](#)

### About

20-years as a Manufacturing Engineer and 28-years as a military professional . I have experience in leading people, managing projects, CIP, NPI, and building cross-functional teams to successfully develop and complete projects.

### Activity

44 followers

Posts Trevor created, shared, or commented on in the last 90 days are displayed here.

[See all activity](#)



### Manufacturing Engineer 4, Project Manager

Lam Research

2010 – Present · 11 yrs

CIP Engineer for high level, high impact, cross functional plant and corporate initiatives. Employ Lean Six Sigma tools to drive projects to optimal solutions and implementation.

### Education



#### Oregon State University

Bachelor of Science (BS), Industrial and Manufacturing Engineering

1995 – 1999

### Skills & endorsements

#### Cross-functional Team Leadership · 1

Michael Mankoski has given an endorsement for this skill

#### Project Management

#### Manufacturing

Show more ▾

### Interests



#### Oregon State University

186,324 followers



#### Lam Research

183,930 followers

### People also viewed

Renee Powell · 3rd

Independent Arts and Crafts Professional

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

**TREVOR DEHART, RENEE POWELL, BRIAN SHANNON, and DAVE BROWN,**

PLAINTIFFS,

v.

**DEBBIE TOFTE, KATHERINE BARNETT, AJ SCHWANZ, and TAMARA BROOKFIELD,**

DEFENDANTS.

**CASE NO. 21YAM0001CV**

**Defendant Aj Schwanz’s  
Special Motion to Strike  
under ORS 31.150 and  
Joinder in Defendant  
Katherine Barnett’s  
Special Motion to Strike**

**ORAL ARGUMENT REQUESTED**

**Oral Argument Request**

Schwanz joins in all other Defendants’ requests for a 90-minute hearing. Under ORS 31.152(1), that hearing on the special motion to strike is to be set within 30 days of the filing of this motion, or as soon after that as docket conditions allow. Official reporting services are requested.

**Joinder**

Schwanz joins Barnett’s Special Motion to Strike filed on October 28, 2021. To spare the Court from having to review—and the parties from having to brief, review, and respond to—separate anti-SLAPP motions involving largely similar subject matter, Schwanz incorporates the

1                   **4.     If HB 3047 permits the Directors to hold Schwanz liable, it is**  
2                   **unconstitutional as applied to her speech.**

3                   For the reasons above, the Directors' HB 3047 claim fails. If there is any  
4                   doubt about the construction of the statute, the Court should construe it to  
5                   avoid the constitutional problems that follow. *See* Barnett Brief at 11–13.

6                   But if the Court holds that the Directors can hold Schwanz liable under  
7                   HB 3047, then the statute is unconstitutional as applied to her speech. This  
8                   conclusion follows from *The Florida Star v. B.J.F.*, in which Florida had  
9                   attempted to impose civil liability for publishing the name of a victim of a  
10                  sexual offense. 491 US 524, 526 (1989). *The Florida Star*, in violation of the  
11                  statute, printed verbatim a police report containing B.J.F.'s first name. *Id.* at  
12                  527. The Supreme Court held that a state may not prohibit the publication of  
13                  lawfully obtained truthful information unless necessary to “further a state  
14                  interest of the highest order.” *Id.* at 533 (quotation marks omitted). And it held  
15                  that even protecting victims of sexual assault was not such an interest. *Id.* at  
16                  537–38.

17                  This is a much easier case than *Florida Star*. The Directors do not dispute  
18                  that Schwanz' post was truthful or that she came by her information lawfully.  
19                  And protecting politicians from their constituents' attempts to hold them  
20                  accountable is a much less important state interest than protecting victims of  
21                  sexual assault. Political speech lies at the “core of the protection afforded by  
22                  the First Amendment.” *McIntyre v. Ohio Elections Comm'n*, 514 US 334, 346  
23                  (1995). “One of the prerogatives of American citizenship is the right to criticize  
24                  public men and measures—and that means not only informed and responsible  
25                  criticism but the freedom to speak foolishly and without moderation.”  
26                  *Baumgartner v. United States*, 322 US 665, 673–74 (1944). The First  
27                  Amendment affords the “broadest protection” to such expression. *Buckley v.*

1 *Valeo*, 424 US 1, 14–15 (1976) (per curiam). If the speech in *Florida Star* was  
 2 protected by the First Amendment, Schwanz’ speech—and indeed the speech of  
 3 all Defendants—is much more obviously so.<sup>4</sup>

## 4 Conclusion

5  
 6 Lawsuits like this one are the reason that Oregon’s anti-SLAPP statute  
 7 exists. For the reasons discussed above, it should not be permitted to move any  
 8 further than it has. Defendant Schwanz therefore respectfully requests that  
 9 this Court grant her Special Motion to Strike, dismiss Plaintiffs’ claims against  
 10 her, and award her reasonable attorney fees and costs upon application.

11  
 12 DATED: November 1, 2021

13  
 14 

15 Rian Peck (they/them)

16 OSB No. 144012

17 *rian@visible.law*

18 **VISIBLE LAW as COOPERATING  
 19 COUNSEL WITH ACLU OF OREGON**

20 Attorney for Defendants Debbie  
 21 Tofte, Katherine Barnett, AJ  
 22 Schwanz, & Tamara Brookfield

23  
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 26  
 27 <sup>4</sup> The same is true under the Oregon Constitution, which has even broader free-speech  
 protections than the First Amendment. Or Const, Art I, § 9.



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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

**TREVOR DEHART, RENEE POWELL, BRIAN SHANNON, and DAVE BROWN,**

PLAINTIFFS,

v.

**DEBBIE TOFTE, KATHERINE BARNETT, AJ SCHWANZ, and TAMARA BROOKFIELD,**

DEFENDANTS.

**CASE NO. 21YAM0001CV**

**Declaration of Aj Schwanz  
in Support Special Motion  
to Strike under ORS 31.150**

I, Aj Schwanz, declare as follows:

1. I am over the age of 18 and a defendant in this action. Except as otherwise indicated, I make this declaration upon personal knowledge. If called to do so, I would testify truthfully as follows.

2. I have lived in the Newberg area with my husband since 2003. We have three children who attend Newberg Public Schools.

3. I care deeply about the Newberg community. Even before I had kids, I stayed involved in the community through church, work, and volunteering. After I had my kids, I became a stay-at-home mom. Since then, I've been involved in my kids' recreational and club sports (including helping form a youth soccer club) and in volunteering at my kids' schools.

1           4. As my kids have grown older and more independent, I've taken  
2 on more substantial volunteer roles in the Newberg School District and in  
3 causes that directly affect the schools and Newberg's students. My work on  
4 that front includes:

- 5           a. Serving as Zone 4 representative on the Newberg School  
6           District Budget Committee.
- 7           b. Serving as parent representative on the Newberg High School  
8           Site Council.
- 9           c. Participating in the District's Strategic Planning meetings  
10           and the committee that updated the District's Parent-Student  
11           Handbook, about reevaluating the District's school start  
12           times.
- 13           d. Sitting on several hiring committees, including the District's  
14           extensive search for a superintendent.
- 15           e. Serving on the Bond Planning Committee and co-chairing the  
16           political action committee that supported the efforts to pass  
17           a \$141M Bond passed in the November 2020 election.
- 18           f. Supporting the campaigns of two school board candidates in  
19           the May 2021 election, both of whom ran on a platform  
20           focusing on equity.

21           5. I began going regularly to Newberg School Board meetings in  
22 2018, after the District underwent unexpected—and deep—budget cuts. I  
23 wanted to know what was happening in the schools and what steps the  
24 Board was taking to address those issues. Though the District weathered  
25 that storm, I have continued to attend Board meetings ever since so that I  
26 stay informed on issues affecting Newberg's students and teachers.

27           6. Plaintiff Dave Brown is the Chair of the Newberg School Board.

          7. Last year, the Board—after community advocacy—adopted  
Resolution 2020-04, titled *A Resolution of the Newberg School Board of  
Directors Condemning Racism and Committing to Being an Anti-Racist  
School District*. A true and accurate copy of the full text of that Resolution  
is attached as **Exhibit 1**. Director Brown was the only Board member who  
voted against adopting Resolution 2020-04. He did not explain the reason

1 for his “no” vote. The meeting minutes from the June 23, 2020, Board  
2 meeting—which reflect the Board’s votes on the Resolution—are attached as  
3 **Exhibit 2.**

4 8. I was confused about why Director Brown voted against the  
5 Resolution. I didn’t know whether he disputed the fact that racism exists in  
6 Newberg today, or whether he disagreed with some of the Board’s  
7 resolutions to address institutional racism in Newberg’s schools. I wasn’t  
8 the only one confused by his silence—many parents, teachers, and students  
9 in the District were concerned by Director’s Brown’s vote against the  
10 Resolution.

11 9. In response, a friend of mine started an online discussion about  
12 next steps for anti-racism work to take place in Newberg Public Schools.  
13 Out of that discussion, a Facebook group was formed that eventually  
14 became “Newberg Equity in Education”—NEEd, for short—in the summer of  
15 2020. My friend asked me to be a co-administrator of the group, given that I  
16 was familiar with the Board’s procedures and practices for public meetings.  
17 I’ve been a co-administrator of the group since it was formed, and continue  
18 to serve as co-administrator today.

19 10. NEEd currently has 649 members. The membership  
20 comprises mostly parents, but also teachers and other community members.  
21 Everyone in the group, including me, believes that education must be  
22 equitable, including proactively anti-racist. Of course, there are many ways  
23 to go about creating equitable learning environments, and those are the  
24 kinds of things we discuss in NEEd.

25 11. I am one of the most prolific posters in the NEEd group. I  
26 post several times per week about any number of issues: upcoming School  
27 Board meetings; topics on the Board’s agenda; how to submit comments to

1 the Board if members so wish; news articles relevant to our discussions;  
2 anti-racist learning resources; etc. My posts inspire a lot of discussion  
3 among NEEd's members—so much so that when I'm not as active, I notice  
4 the group's conversation pace slow down.

5 12. After NEEd had already been active for about a year,  
6 Director Shannon proposed in July this year to ban Black Lives Matter and  
7 pro-LGBTQ+ signs and displays at all Newberg schools. The meeting minutes  
8 from the July 13, 2020, Board meeting—which reflect Director Shannon's  
9 proposal and the ensuing discussion—are attached as **Exhibit 3**.

10 13. Many stakeholders in the community were galvanized to  
11 action following Director Shannon's proposal. Some attended weekly  
12 protests at the flagpole in the center of town and, per Chair Brown's public  
13 statements, some 500 people emailed the Board to submit comments about  
14 the policy proposal. Around 100 people testified at the Board's meeting on  
15 August 10. In the end, Chair Brown—joined by the three other Plaintiffs in  
16 this action—voted to approve the district-wide ban on displaying BLM and  
17 Pride symbols. The meeting minutes from that August 10, 2021, Board  
18 meeting are attached as **Exhibit 4**.

19 14. Sometime after the Board approved the district-wide ban,  
20 a former Newberg High School student took to Twitter to reshare tweets  
21 about experiences he had with Chair Brown when Brown was the Head  
22 Coach for the Boys Tennis Program, as well as Staff Security, at Newberg  
23 High. A member of NEEd screenshot the tweets and posted them in the  
24 NEEd Facebook group. The student's mother is a NEEd member and  
25 commented that her student hadn't felt comfortable sharing these  
26 experiences with Chair Brown when he was at Newberg High. The original  
27 post is no longer available on the NEEd group (either because she deleted it

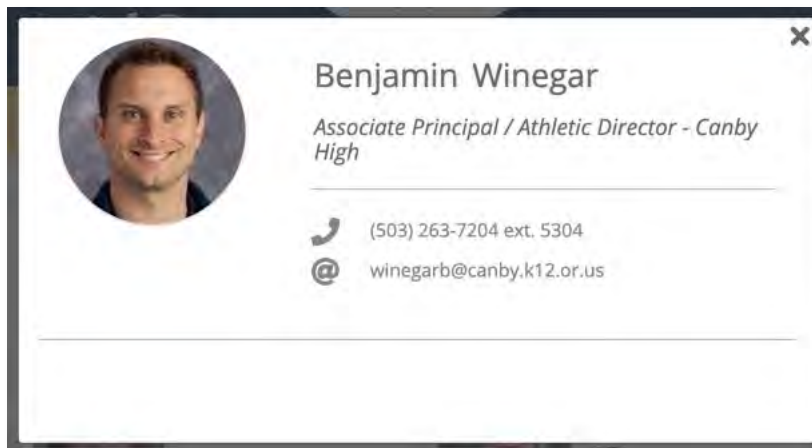
1 herself or left the group), but the former student's tweets are still on  
2 Twitter. I took a screenshot of those tweets on October 28, 2021, and can  
3 confirm that they are the same ones as were posted to the NEEd group a few  
4 months ago, in August. My screenshots of the former student's tweets  
5 (which have been redacted for privacy) are attached as **Exhibit 5**.

6           15.           When I saw the former student's tweets, I was concerned.  
7 I knew—through Chair Brown's statements to the media and publicly  
8 during at least one Board meeting—that he was still coaching students, but  
9 now as the Head Coach for the Canby High School Girls Tennis Program. I  
10 also noticed that one of the former student's allegations included Chair  
11 Brown permitting an Assistant Coach to call student athletes a homophobic  
12 slur when he wasn't pleased with their performance.

13           16.           Though I thought the student was brave for sharing his  
14 story, I believe that social-media posts do not do much to serve current  
15 students who might be having similar experiences. To that end, I believed  
16 any student who had experience with Chair Brown in his capacity as a Head  
17 Coach should feel empowered to report their experiences (whether good or  
18 bad) to the Canby Athletic Director. In my experience with serving on  
19 campaigns and other initiatives, I know that even one barrier to entry—  
20 even something as simple as using a search engine to find someone's contact  
21 information—can prevent someone from submitting reports through the  
22 proper channels.

23           17.           I found the Canby Athletic Director's name and contact  
24 information easily. I don't recall exactly how I got it, but it would have been  
25 through one of the following two ways:  
26  
27

- 1 a. By entering “Canby School District” in Google, clicking on  
 2 the school’s website, navigating to the “Meet Our Staff”  
 3 page, and looking for the Athletic Director. If I used that  
 4 route, this is where I would have ended up:  
 5 <https://canbyhs.canby.k12.or.us/en-US/staff>. And this  
 6 screenshot shows the information I would have found:



- 10
- 11
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- 14 b. Or, by entering “OSAA Canby” in Google and navigating  
 15 to the Oregon School Athletics Association webpage for  
 16 Canby High School, which would have led me here:  
 17 <https://www.osaa.org/schools/76>. The first heading on  
 18 the page, called “Contact Information,” lists the Athletic  
 19 Director’s name and contact information as follows:

20

| Contact Information     |                 |                |                               |
|-------------------------|-----------------|----------------|-------------------------------|
| Position                | Name            | Phone          | Email                         |
| Superintendent          | Dr. Aaron Downs | (503) 266-0019 | aaron.downs@canby.k12.or.us   |
| Principal               | Greg Dinse      | (503) 263-7201 | dinseg@canby.k12.or.us        |
| Assistant Principal     | Cari Sloan      | (503) 263-7202 | sloanc@canby.k12.or.us        |
| Assistant Principal     | Kimie Carroll   | (503) 263-7203 | carrolk@canby.k12.or.us       |
| Athletic Director       | Ben Winegar     | (503) 263-7204 | winegarb@canby.k12.or.us      |
| Activities Director     | JD Bellum       |                | jared.bellum@canby.k12.or.us  |
| Athletics Secretary     | Heather Britt   | (503) 263-7216 | CHS-Athletics@canby.k12.or.us |
| Bookkeeper / Accountant | Brenda Griffin  | (503) 263-7217 | griffinb@canby.k12.or.us      |
| Athletic Trainer        | Solomon Norris  |                | solomon.norris@providence.org |

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18. I knew to search for the Canby Athletic Director because Chair Brown announced during public Board meetings and gave an interview to

1 the *Canby Herald* about his new position as a coach at Canby High. That  
2 interview, published over a year ago on April 1, 2020, is accessible on the  
3 *Herald's* website here: [https://pamplinmedia.com/cby/150-sports/460445-  
4 374489-brown-takes-over-canby-girls-tennis-program](https://pamplinmedia.com/cby/150-sports/460445-374489-brown-takes-over-canby-girls-tennis-program). I have attached a true  
5 and accurate copy of the full article as **Exhibit 6**.

6 19. When Chair Brown was running for his position on the  
7 Newberg School Board, he relied on his years of coaching and serving as staff  
8 security at Newberg High to support his qualifications for that role. The  
9 Newberg School District elections portion from the May 21, 2019, Yamhill  
10 County Special District Election Voters' Pamphlet—which I recall receiving as  
11 part of the elections—is attached as **Exhibit 7**. After winning that seat, Chair  
12 Brown resigned his employment at Newberg High School.

13 20. A true and accurate copy of the post I made to the NEED  
14 Facebook group on August 15, 2021, about Chair Brown's place of work and  
15 the Athletic Direct's contact information—the post of mine that is the subject  
16 of the Directors' allegations against me—is attached as **Exhibit 8**.

17 21. I posted that Chair Brown worked at Canby High School for  
18 two reasons. First, I believe in uplifting and centering students' voices. I know  
19 from my own experience and from my kids' experiences (experiences that are  
20 of relative privilege, given that we are white) that there are many barriers to  
21 reporting problem behaviors of someone who holds a position of authority or  
22 power over a person, especially when that person is a teenager. Finding  
23 someone's phone number or email address doesn't need to be one of those  
24 barriers. I thought that if current athletes had any experiences similar to those  
25 described in the former student's tweet, those current athletes should report  
26 those experiences through the proper channels. Schools cannot investigate  
27 things they don't know about. To me, this was an issue of student safety.

1           22.       Second, I hoped that, if anyone did make a report and the  
2 report was founded, Chair Brown would receive training on equity issues  
3 surrounding race and LGBTQ+ issues and would perhaps even hear from the  
4 students themselves how it made them feel when he made remarks singling a  
5 race out as likely troublemakers or using homophobic slurs. I thought, perhaps,  
6 that if none of the parents and students in Newberg could get through to him,  
7 maybe having conversations with his supervisor and current athletes might  
8 change his mind on issues surrounding equity in education. I, frankly, hoped  
9 that it might change his voting pattern on the Board.

10           23.       My intent was thus two-fold: (1) give high school students  
11 access to information they may need to report safety issues about a coach at  
12 their public school; and (2) to help Chair Brown understand the harmful  
13 effects of the policies he was promoting as a Director of the Newberg School  
14 Board. I didn't intend to stalk, harass, or injure anyone. I didn't even call the  
15 Canby Athletic Director following my post, given that neither I nor my  
16 children have had any direct interaction with him as a tennis coach.

17           24.       I did not know, and could not have known, that Chair Brown  
18 did not consent to my post. He had talked about his new job as a coach at  
19 Canby to the press and to the general public during Board meetings. I did not  
20 know, and could not have known, that he did not want that information to be  
21 general knowledge, because he himself had made it general knowledge.

22           25.       Since the Directors served me with this lawsuit and the TRO,  
23 I feel reluctant to post anything on the NEEd Facebook page. I am worried that  
24 the Directors will take further retaliatory action in an effort to chill my speech  
25 if I do so much as mention one of their names publicly.  
26  
27



1 I hereby declare that the above statement is true to the best of my  
2 knowledge and belief, and that I understand it is made for use as evidence in  
3 court and is subject to penalty for perjury.

4  
5  
6 DATED: November 1, 2021

s/ Aj Schwanz  
Aj Schwanz

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[newberg.k12.or.us](https://www.newberg.k12.or.us)

# Committing to be an anti-racist school district

5-6 minutes

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At the June 23, 2020 Board meeting, the Newberg School Board of Directors approved the following resolution. Staff are committed to the tangible steps and goals outlined in the resolution, and know this is a long term issue that needs a long term commitment to change.

## **Resolution 2020-04**

### **A Resolution Of The Newberg School Board Of Directors Condemning Racism And Committing To Being An Anti- Racist School District**

WHEREAS, the Newberg School board stands for social justice for our black and other marginalized communities in Newberg.

Centuries of violence and oppression and the recent murders of George Floyd, Breonna Taylor, and Ahmaud Arbery have strengthened the need to promote reform in our system of education. We want to be part of the reform process, beginning with an honest discussion of systematic racial bias in our society; and

WHEREAS, As leaders of our Newberg School District and role

models for young people, it is our charge to call out racism in all its forms and stand up against injustice especially in our public education system; and

WHEREAS, our Newberg students are not alone in living in fear of losing their lives because of the color of their skin; and

WHEREAS, Newberg School District shares a value of care and safety for all students regardless of race, ethnicity, economics, mobility, language, family status, gender, sexual orientation, gender identity, disability, initial proficiencies or religion.

*Now, therefore be it resolved on this 23rd day of June 2020, by the Board of the Newberg School District, that, the district condemns racism, racial violence, white supremacy, hate speech, and bigotry in all forms inside and outside of our schools; and,*

The district will work to be actively anti-racist and dismantle systemic racism in our schools and empower people of color by a thorough review of policies, practices, and district cultural norms; and,

The district affirms the value and importance of culturally responsive pedagogy and instructional practices, and of curriculum that represents the diversity of our community; and,

The district believes that having a diverse faculty and staff reflective of the demographics of our students provides significant value to students of color and all students and will continue to work towards a more diverse workforce.

ADOPTED this 23rd day of June, 2020

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En la reunión de la Mesa Directiva Escolar del 23 de junio de

2020, la Junta Directiva de la Escuela Newberg aprobó la siguiente resolución. El personal está comprometido con los pasos y objetivos tangibles descritos en la resolución, y sabe que este es un problema a largo plazo que necesita un compromiso a largo plazo para cambiar.

## **Resolución 2020-04**

### **Una resolución de la Junta Directiva de las escuelas de Newberg condenando el racismo y comprometiéndose a ser un distrito escolar antirracista**

POR CUANTO, la junta escolar de Newberg defiende la justicia social para nuestras comunidades negras y otras comunidades marginadas en Newberg. Siglos de violencia y opresión y los recientes asesinatos de George Floyd, Breonna Taylor y Ahmaud Arbery han fortalecido la necesidad de promover reformas en nuestro sistema educativo. Queremos ser parte del proceso de reforma, comenzando con una discusión honesta de prejuicios raciales sistemáticos en nuestra sociedad; y

POR CUANTO, como líderes de nuestro Distrito Escolar de Newberg y modelos a seguir para los jóvenes, tenemos la responsabilidad de denunciar el racismo en todas sus formas y enfrentar la injusticia, especialmente en nuestro sistema educativo público; y

POR CUANTO, nuestros estudiantes de Newberg no son los únicos viviendo con el temor de perder sus vidas debido al color de su piel; y

POR CUANTO, el Distrito Escolar de Newberg comparte un valor

de cuidado y seguridad para todos los estudiantes, independientemente de su raza, origen étnico, economía, movilidad, idioma, estado familiar, género, orientación sexual, identidad de género, discapacidad, competencia inicial o religión.

*Ahora, por lo tanto, se resuelve en este 23 de junio de 2020, por la Junta del Distrito Escolar de Newberg, que el distrito condena el racismo, la violencia racial, la supremacía blanca, el discurso de odio y la intolerancia en todas las formas dentro y fuera de nuestras escuelas ; y,*

El distrito trabajará para ser activamente antirracista y desmantelar el racismo sistémico en nuestras escuelas y empoderar a las personas de color mediante una revisión exhaustiva de las pólizas, prácticas y normas culturales del distrito; y,

El distrito afirma el valor y la importancia de la pedagogía culturalmente responsiva y las prácticas educativas, y del currículo que representa la diversidad de nuestra comunidad; y,

El distrito cree que tener un profesorado y un personal diverso que reflejen la demografía de nuestros estudiantes proporciona un valor importante a los estudiantes de color y a todos los estudiantes y continuará trabajando hacia una fuerza laboral más diversa.

ADOPTADO este 23 de junio de 2020

**NEWBERG SCHOOL DISTRICT 29J**

Regular Board Meeting, June 23, 2020

Virtual via Zoom Session

**MINUTES**

**BOARD MEMBERS PRESENT**

Dave Brown (arrived 7:14 pm)

Ines Peña

Brandy Penner

Rebecca Piros

Brian Shannon

Bob Woodruff

**STAFF PRESENT**

Dr. Joe Morelock, Superintendent

Nikki Fowler, Director of Finance

Dr. Luke Neff, Director of Strategic  
Partnerships

Ann Ziehl, Director of Special Programs

Karen Pugsley, Administrator on Special  
Assignment

Shiloh Ficek, Nutrition Services Coordinator

Gregg Koskela, Communications and  
Community Relations Coordinator

**BOARD MEMBERS ABSENT**

Ron Mock

**I. BUDGET HEARING**

**Chair Penner** called the hearing to order at 6:30 pm on Tuesday, June 23, 2020. This is time required by law for public comment on the budget.

There were no public comments.

**II. REGULAR SESSION CALL TO ORDER:**

A duly called and noticed Regular Board Meeting of the Board of Directors of Newberg School District 29J was called to order by **Chair Penner** at 7:00 pm on Tuesday, June 23, 2020 via Zoom Session.

**III. REVIEW AGENDA**

There were no changes to the agenda.

**IV. CONSENT AGENDA**

MOTION 222: Move that the Newberg School District Board of Directors approve the consent agenda as presented.

**Moved: Bob Woodruff; Second: Ines Peña**

**Motion passed 5-0**

V. **PUBLIC COMMENT**

a. **Lily Green (3523 Willow Oak Dr.) (Written statement provided)**

Hello, My name is Lily Green and I am a rising senior at Newberg High School. I am here before you today to discuss the lack of knowledge of African-American historical events that plagues our school district.

My sophomore year at Newberg High I took Advanced Placement U.S. History where I learned everything from the revolutionary war to watergate.

However, it came as a shock to me to open my social media on June 19th of this year to see the word JUNETEENTH trending and having no idea what it meant. I ended up spending over an hour researching this topic and I realized I had never been taught that over 2 years after the Emancipation Proclamation was signed, all slaves were finally set free.

So I am here to ask for action on this subject.

I am asking for an amendment in Newberg's K-12 curriculum on historical facts to include matters in African American history.

Facts such as that one in four cowboys were African American, that George Washington's teeth were not made out of wood but taken out of the mouth of slaves, that Henry Ford stole ideas from a black man for his automobile design. I am asking for Newberg to acknowledge the trials and tribulations faced by African Americans throughout this country since its founding.

I understand that Newberg is not the only city where these issues are prominent. But I am hopeful that Newberg will be a forefront in the fight against this form of systematic racism.

Thank you for your time.

b. **Ursa Shaw (27170 Glendora Lane) (Written statement provided)**

First of all, I want to thank you for your service to the Newberg community. Your dedication to students and families is inspiring. Especially during this challenging time when there are so very many tough decisions to be made, I want you to know that you are seen and you are much appreciated!

Tonight, I would like to speak to two issues.

-As a teacher and as a parent, my heart is growing heavy as I think ahead to the fall. I was recently part of an ODE public meeting and was learning just how complicated the re-opening will be. In response to the large educational challenges that this fall will bring, my recommendation is for NSD to create a **re-opening task force** to act in an advisory capacity to

the superintendent, effective immediately. This summer, as school buildings continue to stand visibly dark and vacant, I believe it would be excellent for the community to know that re-opening work is continuing, at a faster pace than ever. I would be happy to volunteer to be part of this group and I know others who would be glad to be asked to be a part of this. Of course, any district employees interested in being part of this task force would need to be paid for this extra work.

- I am a huge advocate for libraries and was delighted to start the Afterschool Library Program at Mabel Rush Elementary. It was a program that cost nothing (volunteer run), put more books than ever into the hands of more students than ever and was an efficient use of the public's investment in school library materials. As the district faces large budget cuts, as well as new school-wide COVID-19 sanitation protocols, I strongly urge you to **help keep school library access open** to students. Most teachers have classroom libraries of their own that students use frequently. However, these shared classroom books will be off-limits in the fall because of concern about viral spread. This is a potent reason to keep the school libraries open and available to students. There is a way to both follow the protocols of the Oregon Health Authority and to allow students to check out library books. Books would sit for several days between check outs and the librarian would maintain social distance while checking out books to students. All tables and chairs would be taken out. Storytime on the rug would continue with socially distanced spacing. Both research studies and common sense indicate that choice reading is foundational in motivating students to both *learn to read* and *read to learn*. To the many families that do not frequent the public library, school libraries provide unparalleled access to reading materials. Please help keep this resource open and available.

Thank you for letting me share! Kudos to you for serving your community with your time, energy, and knowledge, especially during this tough time.

## VI. BOARD AND SUPERINTENDENT COMMENTS

### a. Board Comments

**Director Piros:** Last meeting, the consent agenda had an item I wanted to bring notice to. Joe Morelock will be on furlough just like the other administrators, classified, and CPST employees. I wanted to thank him for doing this, for doing what he can to help the district.

**Director Woodruff:** Thank you to Lily Green, our person who made public comment tonight. We had our Board retreat over the weekend. The word that stands out is change. Change can be difficult, and stressful, but it provides a lot of opportunity. I hope we will embrace the opportunity.

**Director Shannon:** I do want to thank the speaker for sharing her views, and we will take it into account as we move forward.

**Director Peña:** Thank you Lily. This is a hard time, but we need to push forward and improve our curriculum. I mentioned at the retreat it's time to reimagine education, and I'm committed to doing that. I don't know if people saw the video of a school Board



member from Salem-Keizer, who appeared in blackface as a protest of something. I hope we won't go that direction here. That is still harmful to people of color. I do not condone that behavior.

**Chair Penner:** I want to thank the Board members for giving time over the weekend. I'm glad we are moving forward.

**b. Superintendent Comments**

I want to congratulate Mark Brown, Assistant Principal at NHS, who received a book deal for his book "Be Who You Is". I'm excited for him and proud of him. We found out this week that our grant application for phase 2 of the health services planning grant was approved. This is important for us and exciting. It's shown us how much need we have and how important it is to get services on site. We are hoping some new services might be in place by spring of 2021.

We continue to work hard on planning for school in the fall, working on lots of different models. We will have something in the next couple of weeks to bring out to the public. We are preparing for all kinds of levels of in-person, hybrid, and fully distant learning. We may consider a possible calendar change, with something to the Board in the next few weeks. We are looking at extending the winter break and spring break, which would shorten the following summer break. We have work to do to see if it will work. The main thing is we are concerned for a potential resurgence of the virus, and also the regular flu season. We will get public comment as well.

Thanks for the time at the Board retreat. It's important to work with these challenging topics and keep at it. I agree with Ines, I've been watching things in Salem-Keizer, and am confident our Board won't go this direction.

**VII. REPORTS AND PRESENTATIONS**

**a. Monthly Financial Report**

**Nikki Fowler, Director of Finance**, presented the monthly financials. Things have not changed much from last month. We are starting our audit process virtually. The workshare process went very well. None of our employees have received any payment yet; hopefully by the end of June. We're hearing from other districts that they are starting to receive payments, so hopefully soon ours will come through.

We received some of our final transportation bills, which was reduced 12% from our contract.

**VIII. NEW BUSINESS**

**a. Approve Board Resolution Condemning Racism**

At the June 9, 2020 Board Meeting, public comment and Board Member comments encouraged the Board to consider a resolution condemning racism. Superintendent

Morelock gathered sample resolutions from others districts and gathered feedback from Board members and staff members to present the draft in the packet.

**Superintendent Morelock:** I worked with David Jaimes, incoming Assistant Principal at Edwards Elementary, and many staff members of color. We broadened it to include all people of color. We have some steps in the resolution that are goals for things to work on and review and check progress on.

**Chair Penner:** I'm going to read the comment from Ron, who can't be here tonight due to a work emergency situation: "I support the anti-racism statement, although I would prefer to cut the first "whereas" because it makes it sound like we are reacting only to current events, and seems to imply we can stop events like these killings by our efforts. Without the first "Whereas", I think the statement says everything we need to say, and is more about our duty and makes our commitment less dependent on the immediate context. Even if the statement is unamended, I would vote for it."

MOTION 223: Move that the Newberg School District Board of Directors adopt Resolution 2020-04, "A Resolution of the Newberg School District Board of Directors Condemning Racism and Committing to Being an Anti-Racist School District" by title only.

**Moved: Brian Shannon; Second: Ines Peña**  
**Director Brown** voted against.

**Motion passed 5-1**

**b. Adopt Budget for 2020-2021 School Year**

The proposed budget for the 2020-21 fiscal year has been reviewed and approved by the Budget Committee. The Board is asked to adopt the 2020-21 budget and make the enclosed appropriations, and impose and categorize the tax. **Chair Penner:** This has been such a strange year, but I'm grateful to the Budget Committee. **Director Woodruff:** I am also grateful.

MOTION 224: Move that the Newberg School District Board of Directors approve the attached Resolution 2020-05, adopting the 2020-21 proposed budget, making appropriations, imposing taxes, by title only.

**Moved: Brian Shannon; Second: Bob Woodruff**

**Motion passed 6-0**

**c. Approve Meal Prices for 2020-2021 School Year**

**Shiloh Ficek, Nutrition Services Coordinator,** has carefully analyzed budget as well as the past year, and is pleased to report no need for an increase to meal prices. The meal prices will remain the same for the 2020-21 school year.

MOTION 225: Move that the Newberg School District Board of Directors approve keeping meal prices level, as presented.

**Moved: Ines Peña; Second: Bob Woodruff**

**Motion passed 6-0**

**d. Approve Food Commodity Contracts**

As a member of the Oregon Child Nutrition Coalition, Newberg School co-issued a permissive RFP for commodity processing. The contract term is one year beginning on July 1, 2020. It is requested that the RFP for the processing of Commodity and Non-Commodity Beef, Cheese, Chicken, Eggs, Alaskan Pollock, Flour and Peanuts be awarded as outlined in the packet.

**Chair Penner:** Are there any major changes? **Shiloh Ficek:** Not major, although I took a few vendors out, focusing more on fresh food. I'm also working to standardize across the district, so that we have more similarity across our schools.

MOTION 226: Move that the Newberg School District Board of Directors approve awarding the processing of Commodity and Non-Commodity Beef, Cheese, Chicken, Egg, Flour, Alaskan Pollock, and Peanuts for the 2020-21 School Year to Land O'Lakes, Inc., Tyson/Bosco/Advanced-Pierre Foods, Cargill/Sunny Fresh, Rich's Products, S.A. Piazza, Trident, Yangs, Smucker and JTM.

**Moved: Ines Peña; Second: Bob Woodruff**

**Motion passed 6-0**

As part of the audit procedure, it was recommended to adopt a standard procurement procedure for the Child Nutrition Program. The proposed procurement procedures are in the Board Packet.

**Shiloh Ficek:** This was our first time ever they've looked into our procurement procedure. This was a learning experiment. This is a template using state and federal guidelines to show how we will go about getting foods, making sure we document well, prioritize local food, etc.

MOTION 227: Move that the Newberg School District Board of Directors approve the "Documented Procurement Procedures: Child Nutrition Programs" as presented.

**Moved: Brian Shannon; Second: Bob Woodruff**

**Motion passed 6-0**

**e. Approve Proposed Board Meeting Calendar for 2020-2021**

The Board discussed options for the calendar of Board Meeting dates for the 2020-2021 school year at the June 9, 2020 Board meeting. Staff has looked at the calendar and proposed possible dates for Board meetings, based on holidays and other factors, and assuming Tuesday as the continued meeting day. The proposal has two meeting dates in July and August.

**Chair Penner:** Any comments or concerns with this schedule? **Director Peña:** Will we have to change it if the school schedule changes? **Chair Penner:** Possibly, but not necessarily.

MOTION 228: Move that the Newberg School District Board of Directors approve the Board Meeting Calendar for 2020-2021 as presented.

**Moved: Brian Shannon; Second: Ines Peña**

**Motion passed 6-0**

IX. **FUTURE AGENDA ITEMS**

X. **ADJOURNMENT**

No further matters appearing to come before the Board, **Chair Penner** adjourned the meeting at 7:41 pm.

ATTEST:

APPROVED:

Superintendent

Board Chair

**NEWBERG SCHOOL DISTRICT 29J**  
Regular Board Meeting, July 13, 2021  
Virtual via Zoom Session

**MINUTES**

**BOARD MEMBERS PRESENT**

Dave Brown  
Trevor DeHart  
Ines Peña  
Brandy Penner  
Rebecca Piros  
Renee Powell  
Brian Shannon

**STAFF PRESENT**

Dr. Joe Morelock, Superintendent  
Dr. Derek Brown, Assistant Superintendent  
Nikki Fowler, Director of Operations & Finance  
Shanna Andres, Exec. Assistant to the  
Superintendent  
Ann Ziehl, Director of Special Programs  
Gregg Koskela, Communications Coordinator  
and Bond Manager  
Shiloh Ficek, Director of Nutrition Services &  
Transportation  
Jennifer Nelson, Board Secretary

**I. REGULAR SESSION CALL TO ORDER:**

A duly called and noticed Regular Board Meeting of the Board of Directors of Newberg School District 29J was called to order by **Acting Chair Brandy Penner** at 7:00 pm on Tuesday, July 13, 2021 via Zoom Session. This video session was also recorded and posted.

**II. FLAG SALUTE**

**Rebecca Piros** led the Board in the Pledge of Allegiance.

**III. REVIEW AGENDA**

**Acting Chair Penner** reviewed the agenda. **Director Shannon** requested some amendments to agenda. **Acting Chair Penner** replied those items may be brought up at the end of the meeting under Future Agenda Items. **Director Shannon** stated he wished for the items to be included on this evening's agenda for discussion and will move to reopen the discussion after the new chair is elected.

**IV. OATHS OF OFFICE**

**07min:08sec**

Board members Renee Powell, Trevor DeHart, and Ines Peña took the Oaths of Office after being elected on May 18, 2021.

**V. ELECT CHAIRPERSON**

**10min:30sec**

**ORS 332.040** Officers; term. No later than at the next regular meeting following July 1, the district school board shall meet and organize by electing a chairperson and a vice chairperson from its members. No member shall serve as chairperson for more than four years in succession.

**Acting Chair Penner** invited nominations for Board Chairperson.

- **Director Peña** nominated **Rebecca Piros**; she is willing to serve.
- **Director Shannon** nominated **Dave Brown**; he is willing to serve.

**Acting Chair Penner** closed the nominations for Board Chair.

**Director Peña** and **Acting Chair Penner** provided comments in support for Director Piros for Board Chair.

**Director Piros** offered her own comments about what she would bring to the Board as Chair.

**Director Shannon** called a point of order and said the Board is not to be campaigning during the voting. He provided comments in support for Director Brown for Board Chair.

**Acting Chair Penner** provided comments for why she did not believe Director Brown was suited to serve as Chair. **Director Shannon** interrupted to call the question and end debate. He stated the entire demonstration was out of order and moved the question. The move to question failed for lack of recognition by the Chair and lack of a second to prompt a required two-thirds majority vote for adoption to close debate.

**MOTION 1:** To elect nominee **Rebecca Piros** as the Newberg School District Board of Directors Board Chairperson for 2021-22 school year.

**Motion passed: 3 Yes [Penner, Peña, Piros]- 4 No [Brown, DeHart, Powell, Shannon]**

**MOTION 2:** To elect nominee **Dave Brown** as the Newberg School District Board of Directors Board Chairperson for 2021-22 school year

**Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon]- 3 No [Penner, Peña, Piros]**

**Chair Brown** assumed his new role as Board Chair, commented on the interesting transition, and offered thanks to Director Penner for her service as Chair. He spoke of change, the need for civility, correcting divisiveness in the community and on the Board, and setting aside politics and focus on education for every single student. He spoke of working together with Director Piros to focus on the people. He congratulated the new members and re-elected members sworn in tonight and thanked previous Board members Ron Mock and Bob Woodruff for their years of service.

## VI. ELECT VICE-CHAIRPERSON

29min:28sec

**Board Chair Brown** invited nominations for Board Vice-Chairperson.

- **Director Renee Powell** nominated **Brian Shannon**; he accepted.
- **Director Penner** nominated **Rebecca Piros**; she accepted.

**Chair Brown** asked if there were any other nominations and hearing none he invited Director Powell to provide comments regarding her nomination.

**Director Powell** questioned on the professionalism of the comments during the Chair election and said they weren't very nice and she hoped that the Board can move forward and pull together to represent our students. She said she read all the emails in support of Director Piros and Director Brown and that helped her make her decision, stating there were around 54 for Director Brown and 31 for Director Piros (see official meeting record for referenced emails). She wished to ensure she was listening to the majority of the community would want for our Board and schools.

**Director Shannon** called a point of order stating his belief that the Board is not to be doing speeches about nominations, they are only to nominate and vote. **Chair Brown** said he would continue as they have tonight and allow Director Penner to speak about her nomination of Director Piros.

**Director Penner** provided comments in support for Director Piros for Board Vice-Chair, noting she would create a balanced chair team and bridge contention on the Board.

**MOTION 3:** To elect nominee **Brian Shannon** as the Newberg School District Board of Directors Board Vice-Chairperson for 2021-22 school year

**Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon]- 3 No [Penner, Peña, Piros]**

### III. REVIEW AGENDA (continued)

33min:42sec

**MOTION 4:** **Brian Shannon/Renee Powell** moved that Board reopen the discussion of the Agenda.

**Vice-Chair Shannon** cited policy on meeting agendas and said a list of items was sent to the former chair last week and none of the items made it on the agenda despite the language that any board member or community member can ask to have items added to the agenda (see District's website for the complete [policy](#)).

**MOTION 5:** **Brian Shannon** moved to amend the motion to reopen the discussion of the Agenda and add discussions on BLM signs in District facilities, the Anti-Racism Resolution, and Policy ACB to tonight's agenda.

**Director Piros** asked if he wants the Board to discuss these items in tonight's meeting without any preparation. **Vice-Chair Shannon** replied she could ask Director Penner why it was not placed on the agenda. **Director Piros** added that the agenda needs to be noticed to the public... **Vice-Chair Shannon** said this was out of order and asked the Chair to call for a second on his motion.

**Director Renee Powell** seconded the motion to amend.

**Director Piros** continued the agenda needs to notify the public that these issues are to be discussed and these are issues that I don't feel able to discuss tonight in a thoughtful way or to do good work on it. I feel like this is being pushed through and previously, if we had done this, you would have been very upset about us not being very transparent.

**Vice-Chair Shannon** responded that he attempted to be transparent and get these items on the agenda by following proper procedures but was thwarted, but I want to discuss these things and I'm not going to be stopped by one member abusing their power over the agenda.

**Director Penner** clarified that Director Shannon sent an email and was told that one Board member cannot demand to have items added to the agenda - that is something to be decided as a Board. The proper procedure is to bring the item up during the Future Agenda Items section at the end of the meeting so the Board may decide and then it will be added to a future agenda. She agreed the discussions are important and need to happen, but not without giving notice to allow staff and Board members time to prepare.

**Director Peña** added these are topics of great importance to the community who will want to give their public comment as seen in the past and we want to hear from our constituents.

**Vice-Chair Shannon** said he did want to hear from constituents and these items are just for discussion and he quoted the Newberg School District Policy BDDC – Board Meeting Agenda (see District’s website for the complete [policy](#)).

**Chair Brown** reminded everyone to speak through the Chair for the remainder of the meeting.

**VOTE on MOTION 4:** To reopen the discussion of the Agenda.

**Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon]- 3 No [Penner, Peña, Piros]**

**VOTE on MOTION 5:** To amend the Agenda and add discussions on BLM signs in District facilities, the Anti-Racism Resolution, and Policy ACB to tonight’s agenda after New Business.

**Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon]- 3 No [Penner, Peña, Piros]**

## **VII. PUBLIC COMMENT**

**43min:05sec**

**Chair Brown** gave statements regarding public comment procedure. Public comment was given as follows:

**Resident Brandon Casey** congratulated the new members, offered positive support for Chair Brown’s character and his stand on the anti-racist bill, and said the anti-racist bill needs to be thrown out. He cited a study on children and the harmful effects of masks from the Journal of American Medical Associations (see official meeting record for referenced [study](#)).

**Resident Marie Sellke** spoke of transparency in Newberg School District decision making about masks and block scheduling. She spoke in favor of recommending masks over mandating.

**Newberg Mayor Rick Rogers** thanked the previous board members for their service and welcomed the new board members. He spoke of the community, asked the Board to remember their decisions are not made in a silo and encouraged a welcoming approach to help our community prosper.

**Resident Robyn Wheatley** provided reasons she is opposed to requiring kids to wear masks and asked the Board to vote against requiring them and against medical discrimination for vaccine status.

**Resident Brianna Dodson** asked about the Board’s plans for lifting mask mandates and making masks optional for the fall like other districts have done and gave reasons why she is opposed to children wearing masks.

**Resident Zephyr Bizeau** shared his thoughts and several references for why kids should not be wearing masks when they return to school in the fall (see official meeting record for sources cited on video recording).

**Resident Melissa Tindall** shared why she hoped masks for children would be optional, not mandated.



**VIII. BOARD AND SUPERINTENDENT COMMENTS**

1hr:12min:02sec

**a. Board Comments**

**Chair Brown** reminded board members of their operating agreement and to refrain from personal or character attacks.

**Director DeHart** thanked the directors and staff attending and shared his experience so far joining the Board. He sees the history, hard feelings, and concerns in emails and prays we can heal the hurts and come together to find solutions for kids, parents, teachers, schools, and community.

**Director Powell** offered thanks for help, support, and prayers from others and said she looks forward to serving and building positive and productive relationships with all. She assured all parents and children their voices will be heard and said when working together can accomplish great things for our children and schools.

**Director Penner** welcomed new members, spoke of her experience on the board, and hope of collaboration. She spoke of the recent inundation in board communications and mentioned 96 emails were received sharing perspectives on the District's efforts to ensure all students feel safe and that they belong with 87% in support. She read one of the emails from a student that she felt was impactful (see official meeting record for referenced emails).

**Director Peña** welcomed the new directors, thanked supporters in her reelection, shared her experience on the Board and desires to not be personally attacked or have hate towards her as she tries to represent the often unheard and unseen part of the community.

**Director Shannon** welcomed the new members to the Board and congratulated Director Brown for his election as Chair. He said Chair Brown will do an excellent job fairly administering the meetings and centering this team on what is best for students.

**Director Piros** congratulated and welcomed the new members, said she looked forward to working with Chair Brown and Vice-Chair Shannon and doing all she can to serve the students, staff, and community she was elected to serve. She also thanked all those that wrote in regarding the chair selections and those that supported her.

**Chair Brown** maybe through a tough meeting our differences could be our strength and our challenges can bring us together rather than focusing on perceived weaknesses. He encouraged the Board to think about the unique skills and perspectives to unify them before they come together for the board retreat.

**b. Superintendent Comments**

**Superintendent Morelock** welcomed the new members and Director Peña's continuation on the board, and thanked all the public commenters. He acknowledged the high interest of masks, different opinions, and next steps. He reflected back on what several members said tonight being off to a rough start and encouraged all to pull back and focus on civility, remembering kids are watching and student representatives will be on the Board this year. He spoke of the need to support all kids and that diverse opinions make the best decisions.

**IX. CONSENT AGENDA**

The consent agenda included minutes for approval from the June 22, 2021 Board meeting, donations, and personnel items (see board packet for full report).

**MOTION 6: Brian Shannon/Rebecca Piros** moved that the Newberg School District Board of Directors approve the consent agenda as presented.

**Motion passed: 7 Yes- 0 No**

**Chair Brown** read and acknowledged all donations.

**X. REPORTS AND PRESENTATIONS**

**1hr:26min:57sec**

**a. Ready Learners Safe Schools Update**

**Superintendent Joe Morelock** and **Assistant Superintendent Derek Brown** provided an update from the Oregon Department of Education (ODE) regarding the new Ready Schools Safe Learners Resiliency Framework for the 2021-22 School Year released on June 25, 2021 including Guidance for COVID-19 Prevention in Kindergarten (K)-12 Schools, an Order from the Centers for Disease Control and Prevention Department of Health and Human Services, and a slideshow on the 2021-2022 School Opening Plan for the Newberg School District (see board packet & official meeting record for full report). In order to prepare for decisions that may need bring forth a plan by the next meeting, they polled the Board to see where they stand with addressing masks and vaccinations.

**Director Piros** thought rather than mandating vaccines and masks they could allow choice and have people sign a liability waiver to take on the risk.

**Director Penner** agreed with Director Piros' solution and added she would really like to hear from staff, teachers, and principals who will be in the buildings with unmasked and unvaccinated people. She would also like to see more research about a liability waiver.

**Director Powell** agreed it should be a choice with a signed consent so no liability with the schools. She said masks and vaccines are a choice and should not be mandated and that it is a health privacy act violation to even ask. **Superintendent Morelock** asked her to clarify if it was a violation to ask staff or students. **Director Powell** replied we should not be asking students their vaccination status or having teachers condemning kids for their choice to vaccinate or wear masks or not. She said she heard from parents in certain schools that teachers are already not bullying, but ostracizing kids that don't want to wear masks to the point they come home crying.

**Vice-Chair Shannon** asked questions about the metrics being tracked to decide when it is okay to lift the mask mandates. He is concerned with delaying the decision as parents start to look for other accommodations for next year if have to wear masks. He wishes to make a motion to lift the mask mandates and revisit if needed.

**MOTION 7: Brian Shannon/Renee Powell** moved that the Newberg School District lift the face mask mandate in district facilities.

**Director Peña** asked why the Board is moving so quickly to vote on this when not all of the Board members have given their opinion yet. **Chair Brown** tabled the motion until the rest of the directors' opinions are heard.

**Director Peña** shared she dislikes masks too but safety is her top concern since she got COVID as a part of the essential workforce which impacted her family in so many ways. She a signed waiver would be needed if folks don't want to wear masks but if we are asking our educators to put themselves on the line we need to ask their opinion and we need to figure out how we are keeping our students and employees safe because kids are super spreaders.

**Assistant Superintendent Derek Brown** asked for a clarification of the motion on the table and if that includes lifting the mask mandates for active summer school going on right now.

**Director DeHart** asked about the waiver being discussed. **Superintendent Morelock** discussed different policies for various vaccination requirements, that it is not a HIPPA violation to ask our employees for vaccination status, and the waiver would be signed to release the District of liability and assuming that risk on your own if you choose not to get vaccinated. The same goes could go for parents choosing to send their children to school either unvaccinated or unmasked to sign a waiver to acknowledge the risk of going against recommendations for safety and releasing the District of liability if they get COVID. He noted the District's insurance carrier does not have any coverage for the coronavirus so we need to figure out what our liability is and our comfort level of the risk. **Director DeHart** continued by discussing his research on masks and younger kids being twice more likely to die of flu than COVID19 and asked if we ever asked to sign waivers for other vaccinations. **Superintendent Morelock** replied we have not for those diseases, this is new and different and it is interesting to see the liability insurance carriers go back and forth on this. **Director DeHart** concluded that he would prefer to make masks optional and really press education for hand-washing and awareness. He does not think the District should mandate it based on conflicting evidence. **Superintendent Morelock** said they are always tracking metrics, especially since this is a respiratory disease, and if it is a choice then some will wear and some won't and there will be a similar amount of folks look for options and maybe choose to not send their kids to school either way.

**Chair Brown** asked about the dates for summer school. **Assistant Superintendent Derek Brown** replied there are two more weeks to go and there is also C.A.R.E. through CPRD throughout the summer. **Chair Brown** said the public seems to want us to go back to no masks and he would like to see it as an option. Parents should still have a choice with everything and he doesn't want to see kids or staff treated differently based on their choices. He would like to see more information on the liability. He wondered if the rules were different for staff than students. **Superintendent Morelock** replied that some employers are requiring vaccines to return to work, but we would need to check in with labor associations. The Board will need to decide if they wish to require staff to mask or not as well.

**MOTION 8: Brian Shannon/Trevor DeHart** moved to amend the motion lift the face mask mandate in district facilities to be effective on the first day of school for the 2021-22 school year.

**Vice-Chair Shannon** said the amendment would be to allow staff to conduct more research on liability issues.

**Director Piros** asked if this if for all staff and students. **Vice-Chair Shannon** said it would be for everybody.

**Director Penner** stated her intent to abstain from the vote because she does not feel like she has enough information to say yes or no at this point. She doesn't know what staff would prefer and the Board only heard from 10-12 parents which is not representative of our thousands of families in the District.

**Director Piros** asked for the Superintendent's opinion. **Superintendent Morelock** noted the challenge and his tendency to be more protective of the people in his charge and he has been very cautious about this because we still do not know enough. He appreciates the amendment to allow more time to watch data and gather information. The District has had some small shutdowns and he is concerned with the long-haul COVID effects on people. The District has work to do on liability part of this and insurance to keep us safe from lawsuits.

**Director Peña** asked to clarify if lifting the mandate in schools will the law requiring masks on busses still be in effect. Staff replied that masks will still be required on busses by law.

**Chair Brown** spoke of mental health issues and learning process being weakened by wearing masks. With the amendment we have time and if we get towards the end of August and things took a turn then we could have an emergency meeting and switch directions to protect the kids.

**VOTE on MOTION 8:** To amend the motion lift the face mask mandate in district facilities to be effective on the first day of school for the 2021-22 school year.

**Motion passed: 5 Yes- 0 No- 2 Abstain [Brandy Penner, Ines Peña]**

**VOTE on Amended MOTION 7:** To lift the face mask mandate in district facilities, effective on the first day of school for the 2021-22 school year.

**Motion passed: 5 Yes- 0 No- 2 Abstain [Brandy Penner, Ines Peña]**

**Chair Brown** called for a break for five minutes at 9:17 pm and reconvened at 9:23 pm.

**XI. OLD BUSINESS** **2hr:28min:04sec**

**a. Finalize the Board Retreat Plan – continued**

**Chair Brown** discussed the two best dates for the Board Retreat and decided on August 24 from 6:00-10:00 pm Attendance will be in-person in the Board Room at the District Office with technology set up for virtual attendance for those Board members that cannot attend in person.

**XII. NEW BUSINESS** **2hr:34min:40sec**

**a. Designate Signatories for Buildings**

**Nikki Fowler, Director of Operations & Finance**, provided updates as to who is allowed to sign on the Columbia Bank and Wells Fargo Bank accounts at the individual building level and presented two attachments show who continues to be able to sign, who must be removed, and who must be added in each building (see board packet for full report).

**MOTION 9:** **Brian Shannon/Rebecca Piros** moved that the Newberg School District Board of Directors approve and designate the depository signatures for fiscal years 2021-22 as listed.

**Motion passed: 7 Yes- 0 No**

**b. Resolution 2021-01: Authorizing Deposit and Withdrawal of Funds**

**Nikki Fowler, Director of Operations & Finance**, presented and recommended adoption of Resolution 2021-01 to establish depositories and set a borrowing limit for the deputy clerk (see board packet for full report).

**MOTION 10:** **Brandy Penner/Rebecca Piros** moved that the Newberg School District Board of Directors adopt Resolution 2021-01: A Resolution Authorizing Deposit, Withdrawal, and Borrowing of Funds, by title only.

**Motion passed: 7 Yes- 0 No**

**c. Resolution 2021-02: Authorizing Deposit and Withdrawal of Funds**

**Nikki Fowler, Director of Operations & Finance**, presented and recommended adoption of Resolution 2021-02 for the deposit and withdrawal of funds for the Local Government Investment Pool (see board packet for full report).

**MOTION 11: Brian Shannon/Rebecca Piros** moved that the Newberg School District Board of Directors adopt Resolution 2021-02: A Resolution Authorizing Deposit and Withdrawal of Funds, by title only.

**Motion passed: 7 Yes- 0 No**

**d. Resolution 2021-03: Designating Auditors and Counsel**

**Nikki Fowler, Director of Operations & Finance**, presented and recommended adoption of Resolution 2021-03 to designate the school district appointments, financial auditors, and legal counsel for the 2021-22 school year (see board packet for full report).

**MOTION 12: Brandy Penner/Brian Shannon** moved that the Newberg School District Board of Directors adopt Resolution 2021-03: A Resolution Establishing Designated School District Appointments, Financial Auditors, and Legal Counsel, by title only.

**Motion passed: 7 Yes- 0 No**

**ADDITIONAL NEW BUSINESS**

**2hr:41min:45sec**

**a. BLM signs/"Pride" flags in District facilities**

**Director Shannon** said he would like to address the posting of Black Lives Matter (BLM) and pride flag displays in district facilities. He feels they are inherently political symbols and posting them in a taxpayer funded facility equates to indoctrination of students into certain ideological beliefs which is not appropriate and we need to refocus our district on education not indoctrination.

**MOTION 13: Brian Shannon/Renee Powell** moved that the Newberg Dundee School District Board of Directors direct the Superintendent to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, and all instances of the symbol known as the Pride flag from district facilities immediately and direct the policy committee to draft policy language prohibiting the display of political signs, flags, and placards, in district facilities with the sole exception of the American flag and the Oregon state flag.

**Director Penner** said she believed the Board needs to table this item as we are over schedule and these are heavy topics that deserve our full attention.

**MOTION 14: Brandy Penner/Rebecca Piros** moved to table the motion.

**Director Piros** agreed the item needed to be tabled to allow constituents to give input, so staff can determine if we can legally do this, and so the Board may consider this more thoughtfully.

**Director Peña** said the Board already received a ton of emails about this with the majority supporting the principal that supported students and faculty expressing themselves and feel welcome. She would love to hear more if those emails were not enough (see official meeting record for the June 22, 2021 Board meeting for referenced communications).

**Director Powell** said she would like to hear more from community and she heard concerns from parents from other side that children are scared with flags in classroom because they have police officer in their

families and this represents a different thing for different sides. If we want to make all safe and welcome then we have to for everybody on both sides. It would be good to hear from everyone, staff, parents, and kids.

**Director DeHart** agreed and said these symbols or political or social movements are not black and white, they're gray and we need to discuss if there is a happy medium. Asked if the motion is saying as a government entity we shouldn't be supporting one cause over another or are we saying that kids cannot express themselves.

**Vice-Chair Shannon** said he is for students to wear what clothes they want, to express themselves, but there is a big difference between that and government paid employees using that public trust to instill their own political values and morays and that crosses the line to propagandizing.

**Chair Brown** said it is a tough issue and that we keep losing focus on the public charge to be a school and educate our kids. Some of these things are important to some and it has divided us. Agreed on tabling.

**VOTE on MOTION 14:** To table the motion to direct the Superintendent to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, and all instances of the symbol known as the Pride flag from district facilities immediately and direct the policy committee to draft policy language prohibiting the display of political signs, flags, and placards, in district facilities with the sole exception of the American flag and the Oregon state flag to August 10, 2021.

**Motion passed: 7 Yes- 0 No**

#### **b. The District's Anti-Racism Resolution**

**Vice-Chair Shannon** said he wished to address the anti-racism resolution that was passed last year during a tumultuous time and we adopted boilerplate language given to us by the Oregon School Boards Association (OSBA) (see District website for complete resolution and video recording from December 8, 2020). Now that things have calmed down and we've heard a lot from our community about it, it had some language in there that concerned a lot of people.

**MOTION 15:** **Brian Shannon/Renee Powell** moved that the Newberg Dundee School District Board of Directors to direct the policy committee to draft replacement language for the Anti-Racism Resolution 2020-04.

**Board Secretary Jennifer Nelson** informed the Chair of a procedural need to table all decisions on the three items added to the agenda this evening to allow for proper notification to the public according to public meeting laws. It was also noted that Spanish interpreters were only contracted until 10:00 pm.

**Director Piros** also noted that the Board does not have a Policy Committee established yet for these items to be referred to.

**MOTION 16:** **Dave Brown/Trevor DeHart** moved to table the motion to the August 10, 2021 Board meeting.

**Motion passed: 7 Yes- 0 No**

**c. Policy ACB – All Students Belong**

**Vice-Chair Shannon** said he would like to discuss Newberg School District Policy ACB (All Students Belong) which was passed outside of the normal order of business and in contravention of our rules last December. He urged everyone to look at the video of how that went because members were not allowed to propose amendments, the vote normal order of business per Roberts rules was not followed, a vote was not taken to end discussion, so it was illegally passed. So at the next meeting he will be moving to rescind the policy ACB and refer it back to the policy committee for further review.

**Chair Brown** tabled the discussion to the next meeting as no motion was formally made.

**XIII. FUTURE AGENDA ITEMS**

The next meeting will be August 10, 2021, at 7:00 pm.

**XIV. ADJOURNMENT**

No further matters appearing to come before the Board, **Chair Brown** adjourned the meeting at 9:56 pm.

ATTEST:



Superintendent

APPROVED:



Board Chair

**NEWBERG SCHOOL DISTRICT 29J  
BOARD OF DIRECTORS**

**Regular Board Meeting**  
August 10, 2021  
Virtual via Zoom Video Conference Call

**MINUTES**

**BOARD MEMBERS PRESENT**

Dave Brown  
Trevor DeHart  
Ines Peña  
Brandy Penner  
Rebecca Piros  
Renee Powell  
Brian Shannon

**STAFF PRESENT**

Dr. Joe Morelock, Superintendent  
Dr. Derek Brown, Assistant Superintendent  
Nikki Fowler, Director of Operations & Finance  
Karen Pugsley, Director of Teaching & Learning  
Ann Ziehl, Director of Special Programs  
Gregg Koskela, Communications Coordinator  
and Bond Manager  
Shiloh Ficek, Director of Nutrition Services &  
Transportation  
Jennifer Nelson, Board Secretary

**I. REGULAR SESSION CALL TO ORDER:**

A duly called and noticed Regular Board Meeting of the Board of Directors of Newberg School District 29J was called to order by **Chair Dave Brown** at 7:01 pm on Tuesday, August 10, 2021 via Zoom Session. This video session was also recorded and posted.

**II. FLAG SALUTE**

**Rebecca Piros** led the Board in the Pledge of Allegiance.

**III. REVIEW AGENDA**

**Chair Brown** reviewed the agenda.

**IV. PUBLIC COMMENT**

**00:02:46**

**Chair Brown** gave statements regarding public comment procedure. Public comments were given and summarized in the minutes as follows (see the video recording of the meeting for full statements).

**Resident Sonda Martin** spoke of bullying going on at schools toward LGBTQ and minority students and requested the Board table the votes on the anti-racism resolution, the All Students Belong policy, and banning all the flags to hear all opinions and make a non-partisan decision in the best interest of all students.

**Parent Ross Davis** stated he was against the Board removing and enacting prohibitions on symbols of support and solidarity and encouraged refocusing on staff development to ensure student success which cannot be done by ignoring the most vulnerable populations like our LGBTQ and Black students.

**District Teacher Stacey Dalton** agreed with the Board that political statements and messages do not belong in classrooms, however, she did not support a ban of Pride flags or BLM posters because they are messages of love and support, not propaganda.



**Past District Student, Parent, and Local Business Owner Shannon Eoff** shared a story about one of her Black child's experience with being called a racial slur during a public school game. She strongly encouraged the Board to be anti-racist and to vote no on the motions.

**Past Resident Jere Witherspoon** spoke of what makes a good school board, its role, and basing decisions on input from all stakeholders and what the community wants rather than own agendas. She asked for more transparency from board members during the decision-making process.

**Parent Adam Berger** asked for a focus on guiding principles in decisions and expressed concerns over how teachers will teach with such conflict and opposition and still make classrooms a safe place for all students and wondered how what they teach will be regulated.

**Resident Brianna Dodson** stated she did not sign up to speak.

**Parent Raquel Peregrino de Brito** provided support for the ban and shared her belief that there are only two genders, all lives matter, and that LGBTQ ideology caused gender dysphoria. She said it is not fair to expose vulnerable kids to adult topics or to instigate racism, that LGBTQ propaganda does not prepare kids for healthy relationships, and BLM is designed to be divisive, and that adults should not be sharing their political agendas and ideologies. She said public schools should be about math, science, reading, and writing.

**Parent Brandon Casey** read quotes from BLM supporters and asked any Board member that agrees with the statements to explain to the community why. He offered his support for the ban on BLM signs, removing the anti-racism resolution, and not requiring kids to wear masks at school.

**District Counselor & Parent Joshua Reid** shared that every school counselor in the district has signed a letter asking the Board to vote no on the three agenda items initiated by Director Shannon. He said students must have basic needs met and have a sense of safety before they can learn and these three items would undermine their ability to make students feels safe. He shared student stories who will be affected by the policies.

**Parent Carly Barnett** shared a conversation with her daughters about belonging in Newberg. She asked the Board to continue to allow staff to display the Pride flag.

**Lisa Joyce** stated she gathered donations to provide the Board with equity, diversity, and inclusion educational training. She also recommended the Board watch the educational documentary "Gender Revolution" at their Board Retreat. She said she noticed that all three board members proposed to serve on the Equity Ad Hoc Committee are members who chose to support this ban on flags and recommended Chair Brown to reevaluate that committee's membership to include a member on the other side.

**Resident Caitlin Collins** shared that as a wife of an NSD staff member she opposed the ban on BLM and Pride flag displays and efforts to roll back on the anti-racism resolution. She believed these efforts rob all students of learning opportunities regardless of race, gender, or sexual orientation citing the importance of affirming and inclusive environments and ensuring students are informed citizens.

**Tiffany Fotre** was not available on the call to speak.

**Parent Nicole Lewelling** offered her support for the flag ban other than the American and Oregon flag and shared her opinion that the BLM represents division and hatred, especially towards police officers. She said schools a neutral and safe place for all children, not one group over another.

**Parent Tai Harden-Moore** spoke of the importance of policies that provide a sense of belonging, safety, and security and politically driven efforts to undo the district's previous work towards equity for students that need the most support and to give voice to those drowned out by the majority culture. She said the arguments in support of the ban are about how BLM and Pride symbols bring harm to students who are part of the white, dominant culture and likely already feel a sense of belonging as a part of that culture. She shared a story about her son's experience being called a racial slur at his school in Newberg and another student who told her he was called the "n-word" so much he asked to leave his class early to avoid being called or hearing that word in the hallways.

**Parent Kristen Stoller** spoke of her roles and experiences in the Newberg community as co-founder of the Community Wellness Collective, the NHS Wellness Center, and Wine Country Pride and said these motions feel retaliatory toward the progress made in inclusion and equity in this community. She spoke of the Board's responsibility to vote with the representation of their district in mind and asked why they would go against or denounce the work supported by the community through letters, emails, and comments from the City of Newberg, Providence Newberg, George Fox, Juliette's House, civics groups, counselors of Newberg, teachers unions, students, alumnae, families, and 3,700 signatures collected. She asked the Board to at least delay the decision tonight to include the voices of this community.

**Parent Adam Johnson** stated his support for the Board to take all flags out of school buildings and property except the American and Oregon flags to remove politically divisive symbols out of education. He cited low math and reading scores and attributed to a lack of focus on strictly the subjects needed to succeed academically and outside distractions of items of social justice and sexual orientation which should fall to the parents outside of the classroom.

**Student Melody Scott** expressed her feelings that banning Pride and Black Lives Matter flags was not fair to people of color and in the LGBTQ+. Banning these flags would not make me feel welcome or safe and she does not believe this was the right thing to do. She does not think the flags should be banned and she has friends who are of color and part of the LGBTQ+ that agree with her. As a kid, it is unfair for people to say kids should not be around this environment and she sees it as an example of you are not welcome if you are this and it frustrates more people than just her.

**Parent Richard B. Arnold** shared his experiences as a parent and his child's experience as a transgender child at Newberg. He questioned how these motions all started and if there was a multitude of students that felt threatened by identifications inside a classroom or a teacher that was pushing their agenda that parents heard complaints about. He shared what he loved about the district was that his daughter was mostly accepted by peers and he hadn't heard otherwise. He said he voted for the Board because he believed they had the best interests of students in mind and not for some political points of views to be involved. He asked the Board to vote no or postpone the decisions to allow students to give input.

**Colum Riley** spoke of civil rights history, viral images, and movements. He addressed issues with the language of black lives matter verses the ideas behind the words. He urged the Board to vote no.

**Parent Lydia Schramm** joined along with her daughter, a student in the district, and provided comments for why the students, staff, and community need to know they are valued, how education goes well beyond teaching the core subjects to ensuring students' basic needs are met (Maslow's Hierarchy of Needs) including safety, security, and social belonging and inclusion to be successful. She mentioned the Board heard from students stating these symbols help some of those basic needs to be met in our schools. She asked the Board to postpone or vote no on the removal of all but the American and Oregon flags.

**Parent Robyn Wheatley** stated her support for the Board banning political signs such as BLM and Pride flags because they are unnecessary because there are many other laws against discrimination and teachers do not need signs to show students that they care. She said that people make people feel safe, not signs. She said BLM and Pride flags are exclusive, holding one group over another, and BLM promotes hatred of police officers which would not make police officers' children feel good. Teachers, like police officers, serve the community and should remain neutral. It is the role of the schools to educate not indoctrinate children with political beliefs.

**Resident John Read** spoke on behalf of the Board's decision to remove signage from schools other than state and national flag. He also agreed with teacher's teaching curriculum in schools and we already have restrictions on what can wear in schools like gang symbols or lude remarks. All these things are distractions, people can seek out these groups on their own not indoctrinated or persuaded by someone else's ideology. We need better methods of connecting with our children.

**EL Teacher & Parent of Previous Students Ruth Schoenhals** agreed with other comments that students can only learn if they feel safe and have equitable access to opportunities in our district. She encouraged the Board to vote against the policy.

**Parent Amber Dawson** said it is disingenuous to say that Black Lives Matter is not political and felt that George Floyd was not a person to be honored as a criminal. She also said LGBTQ is also a political agenda. She said she did not believe the stories about incidents occurring at the schools and spoke about low test scores. She asked for the politics to get out of the schools and focus on reading, writing, and arithmetic.

**Resident Michael Gunn** was yielded extra time from Pat Bauer. He said Black Lives Matter and LGBTQ was appalling and the schools, like the military, should be neutral. He said the district should focus on education and not political, Marxist, left-wing ideology and critical race theory. He did not feel the teachers or administrators should control the curriculum being taught or what posters can be on the walls.

**Teacher and Parent Stephany Weedon** spoke of representation for all students in classrooms and the impacts of their removal, suicide rates and bullying. She asked the Board to consider how the decision to remove the flags will impact the already oppressed.

**Parent Matt Moriarty** spoke of the divisiveness of the Board's actions to create a culture war and how he used to consider Newberg welcoming and tolerant and rooted in Christianity. He spoke of the Board upending policies that uphold the Christian ideals of love, tolerance, and understanding to the most vulnerable among us and of the effects it will have on the children in our schools.

**Chair Brown** closed the public comment portion of the meeting after the 28 members of the public spoke. 91 people requested to speak; 63 speakers were unheard. Chair Brown directed all those that requested to speak and were unable to forward their written comments into the board if they haven't already.

## V. BOARD AND SUPERINTENDENT COMMENTS

01:25:43

### a. Board Comments

**Chair Brown** opened the floor to comments from the Board. A summary of those comments is as follows (see the video recording of the meeting for full statements).

**Director DeHart** mentioned the many communications received by the Board on this topic and his main concern that kids don't feel safe in our schools. He did not feel these symbols would address bad behaviors.

**Director Peña** shared her own experience as a student at Newberg where classmate told her to "shut up stupid immigrant" and how her teacher made her feel seen and heard. She spoke of her embarrassment the over the media headlines and her disgust with the previous meeting motions. As the only person of color on the Board, they felt personal. However, she is here for the students in our district and will continue to support them and fight for an equitable education for all.

**Director Powell** spoke of the main threads of conversations being safety, welcoming, and non-bullying for all students, staff, and leaders. She said teachers and parents are afraid to speak, kids are being bullied for being straight, and businesses attacked. The role of teachers is for education not sexuality. She asked about the kids that those flags don't make feel comfortable, like police officers children. She said the schools to be welcoming to all children.

**Director Penner** mentioned the large amount of engagement with Board especially those that shared deeply personal and heartbreaking stories. She spoke of pride as resistance to a culture that thrived despite violence, pain, cruelty, and brutal enforcement of oppressive laws, policies, and rules where people are beaten to death for being who they are. She spoke against holding up systems of oppression and removing systems of support that uplift students with no regard for student or staff well-being because of personal discomfort.

**Director Shannon** thanked everyone who turned out to speak and took time to write in to us. He said no one can deny these symbols are divisive and have taken attention away from where they need to be which is teaching the fundamentals of education. He said taxpayers pay for schools to teach children how to read and do math, not what to think about personal ideologies. He said social justice is not some universal moral imperative that everyone has to agree on. Families are where values come from in America, not the state or government.

**Director Piros** thanked the school district for training and leadership opportunities provided to her as a Board member to learn to work together and be more productive for students, staff, and the community. She thanked everyone who shared letters, emails, and comments from the heart from both sides. She shared feedback from a black student at NHS that the motion being considered makes them feel like they haven't been listened to and they are afraid to speak before the Board again. She said she believed in collaboration and working to solve the division together. She thanked school principals and district team for the extra work during a crucial time preparing for a new school year.

**Chair Brown** spoke of the passion on the board and challenges of coming together to work towards board goals, the increase in engagement with over 500 emails, and goals of Black Lives Matter to divide. He spoke of the divided country and those divisions being brought into the classrooms. He said he is not a racist and will work with everybody. He felt the problem is that people don't feel safe and that's what needs work.

**b. Superintendent Comments**

**Superintendent Morelock** thanked all the commenters who were able to speak and said it is important to hear from everyone so he hoped to hear from the other 60 or so that did not speak as some point. The district is working hard to prepare the board room for September to conduct hybrid meetings with continued Zoom access and live streaming as well as in person attendance depending on the status of mask requirements.

**Chair Brown** called for a five minute break at 8:52 pm and reconvened at 8:58 pm.

**VI. CONSENT AGENDA**

**01:59:20**

The consent agenda included minutes for approval from the July 13, 2021 Board meeting and personnel items (see board packet for full report).

**MOTION 17:** **Brian Shannon/Rebecca Piros** moved that the Newberg School District Board of Directors approve the consent agenda as presented.

**Motion passed unanimously.**

**VII. REPORTS AND PRESENTATIONS**

**01:58:51**

**a. Monthly Financial Report**

**Director of Finance Nikki Fowler** presented the monthly financials and cash flow for the month of June (see the Board packet for full report). Discussions followed with clarifications and questions for negative balances, local resources under revenues, and a code not being used anymore, psychological services in special education, and anticipated enrollment numbers based on mask requirements (see the board packet and video recording of the meeting for full report).

**b. Ready Schools Safe Learners Update (including masks)**

**02:10:31**

**Assistant Superintendent Derek Brown** provided another update from the Oregon Department of Education (ODE) regarding the new Ready Schools Safe Learners Resiliency Framework for the 2021-22 School Year released on June 25, 2021, including discussions on recent mask mandates and a presentation focused on recent guidance on masks and quarantine rules and mental health supports for staff and students (see the board packet and video recording of the meeting for full report).

**MOTION 18:** **Brian Shannon/Trevor DeHart** moved to request from district counsel what the district's options are for challenging the governor's mask mandates in court.

**Vice-Chair Shannon** said he seriously doubted the district will be charged \$500 a day based on any statutory law and should be challenged in court for that.

**Director Piros** expressed concerns for the financial risk is advised and what the legal fees or financial consequences would be if we moved to file a lawsuit and it is unsuccessful.

**Director Penner** said she wished to know what the personal liability is for board members to challenge this in court. **Vice-Chair Shannon** stated there is no liability.

**Director Peña** also expressed concerns with individual board members being named in civil suits if the vote to go against the governor's mandates and a student or staff member becomes ill.  
Derek loss of license

Discussions followed about the power given to the Oregon Health Authority (OHA) to enforce mandates and impose maximum fines under Chapter 431 of the Oregon Revised Statutes (ORS).

**MOTION 19: Brian Shannon/Trevor DeHart** moved to call the question and vote on Motion 18.

Discussion followed regarding the motion to call the question and what that does. **Board Secretary Jenn Nelson** said a 2/3 majority vote to call the question and end debate according to Robert's Rules of Order. **Vice-Chair Shannon** replied that board Policy BDDF overrides Robert's Rules and only a simple majority vote is needed to call the question and end debate.

**VOTE on MOTION 19:** To call the question and end debate.

**Motion passed unanimously.**

**VOTE on MOTION 18:** To request for information from district counsel what the district's options are for challenging the governor's mask mandates in court.

**Motion passed: 5 Yes [Brown, DeHart, Piros, Powell, Shannon] - 2 No [Penner, Peña]**

#### **VIII. OLD BUSINESS**

**02:36:35**

##### **a. Remove BLM/Pride signs, flags, placards, symbols from schools**

*At the July 13, 2021 Board meeting, the Board tabled a motion made by Vice-Chair Brian Shannon and seconded by Director Renee Powell to remove all Black Lives Matter (a.k.a. BLM) signs, flags, placards, and all instances of the symbol known as the Pride flag from district facilities immediately and direct the policy committee to draft policy language prohibiting the display of political signs, flags, and placards, in district facilities with the sole exception of the American flag and the Oregon state flag to the August 10, 2021 Board Meeting.*

*Prior to the July 13, 2021 Board meeting, the Board received a large number of communications and public comments shared at the June 22, 2021 Board meeting addressing a poster displayed at Dundee Elementary School with the words "Black students; Black dreams; Black Futures; Black lives; Matter" and the principal's explanation for why it was displayed on social media.*

**Chair Brown** reopened the tabled Motion 13 for discussion.

**MOTION 20: Rebecca Piros/Ines Peña** moved to table Motion 13 until the Board can gather a group of students and staff to work out the issues to make sure the Board is doing something inclusive to make everyone feel safe.

Discussions followed with **Director Piros, Director Peña,** and **Director Penner** providing reasons for why collaborating would be beneficial and also to allow time for everyone to speak that didn't get a chance. **Vice-Chair Shannon** said he was opposed to this effort to stale and removing these signs does not preclude staff from coming up with a replacement. **Chair Brown** said plenty of opportunity was provided for people to give comments at meetings and with the 500 emails sent to the Board and that all kids need to feel comfortable and safe in schools. **Director Powell** said more of a problem was caused by starting out without a clear understanding of what the Board was doing and staying neutral would be best to represent all children.

**VOTE on MOTION 20:** To table Motion 13.

**Motion failed: 3 Yes [Peña, Penner, Piros] - 4 No [Brown, DeHart, Powell, Shannon]**

**MOTION 21:** Brian Shannon/Renee Powell moved to amend the original Motion 13 as follows:

“...that the Newberg-Dundee School District Board of Directors direct the Superintendent to remove all Black Lives Matter (aka BLM) signs, flags, ~~and~~ placards, *apparel, buttons, and all other modes of display*, and all instances of the symbol known as the Pride Flag from District facilities immediately, and direct the Policy Committee to draft policy language prohibiting the display of political signs, flags, *apparel, buttons, and* placards, *and all other modes of display* from District facilities, with the sole exception of the American Flag and Oregon state flag. With exemptions it sees as proper.

**Vice-Chair Shannon** explained his reasons for the amendments to take into account Model UN or language classes where would be proper. **Director Powell** asked who would decide what is proper. **Director Penner** asked who is defining the term “political”. **Vice-Chair Shannon** replied the Policy Committee would draft the language, make the determinations of what is proper, define terms, and give a list of all exemptions.

**Director Piros** asked Superintendent Joe Morelock about the legality of passing this and who will regulate and enforce consequences for staff that do not follow it. **Superintendent Morelock** said he did not have an answer regarding the legality or enforcement until the policy is developed and vetted through legal counsel. At this time, he cannot enforce the directive without an actual policy (see the video recording for the meeting for full discussions).

**MOTION 22:** Brian Shannon/Trevor DeHart moved to make a second amendment to Motion 13 that the restrictions on displays contained within this language will solely apply to district staff and faculty while in performance of their official duties as district employees.

**Director Penner** said the Board cannot put prior restraint on speech and there could be legal ramifications and individual board members can be named in teacher union lawsuits. **Director DeHart** spoke of the Oregon tort laws and said he was told while fulfilling our official duties board members cannot be held liable for decisions made. **Director Penner** responded that if the Board willingly go against law, like retracting of Policy ACB, there is a lot of murkiness so the Board needs more input from legal counsel on ramifications before she is comfortable.

**Director Powell** asked why the Board does not have a lawyer sitting in on board meetings. Superintendent Morelock replied that the cost per hour is very expensive and while larger districts may be able to afford it, that expense would be significant for Newberg.

**VOTE on MOTION 22:** To make a second amendment to Motion 13 to include only district staff.

More discussion followed around some of the same topics already addressed (see video recording of meeting for details).

**Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon] - 3 No [Peña, Penner, Piros]**

**DISCUSSION on MOTION 21 (continued):**

Discussions continued regarding Motion 21 and the first amendment and clarifications on definitions, what items would be restricted or not based on this policy, and enforcement (see video recording of meeting for details).

**MOTION 23:** Brian Shannon/Brandy Penner moved to call the question and vote on Motion 21.

**Motion passed: 6 Yes [Brown, DeHart, Peña, Penner, Powell, Shannon] - 1 No [Piros]**

**VOTE on MOTION 21:** To approve the first amendment to language changes.

**Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon] - 3 No [Peña, Penner, Piros]**

**DISCUSSION on AMENDED MOTION 13:**

Discussion followed on original Motion 13 tabled from July 13, 2021 as amended tonight and **Vice-Chair Shannon** emailed the Board Secretary and the Board the entire amended motion and read it out loud for the vote (see video recording for details).

**VOTE on AMENDED MOTION 13:**

“That the Newberg-Dundee School District Board of Directors direct the Superintendent to remove all Black Lives Matter (aka BLM) signs, flags, and placards, *apparel, buttons, and all other modes of display*, and all instances of the symbol known as the Pride Flag from District facilities immediately, and direct the Policy Committee to draft policy language prohibiting the display of political signs, flags, *apparel, buttons, and placards, and all other modes of display* from District facilities, with the sole exception of the American Flag and Oregon state flag, *with exemptions as it sees proper. The language contained in this directive shall only apply to District staff and faculty while in the performance of their official duties as District employees.*”

**Motion passed: 4 Yes [Brown, DeHart, Powell, Shannon] - 3 No [Peña, Penner, Piros]**

**Chair Brown** mentioned the Board will only have interpretations services provided until 11:00 pm.

**MOTION 24:** Brandy Penner/Rebecca Piro moved to table the other two items under Old Business.

**Motion passed: 6 Yes [Brown, DeHart, Peña, Penner, Piro, Powell] - 1 No [Shannon]**

**b. Direct Policy Committee to Replace Language in Anti-Racism Resolution**

This item was tabled by Motion 24 above.

**c. Rescind Policy ACB – All Students Belong & Refer to Policy Committee**

This item was tabled by Motion 24 above.



**IX. NEW BUSINESS**

**03:59:48**

**a. Designate Board Committees**

**Chair Brown** began to present the proposed Board membership for the policy, personnel, facilities committees and the equity ad hoc committee.

**MOTION 25:** **Brandy Penner/Ines Peña** moved to table the board committee designation discussion to the next board meeting.

**Motion passed: 6 Yes [DeHart, Peña, Penner, Piros, Powell, Shannon] - 1 No [Brown]**

**X. FUTURE AGENDA ITEMS**

The next meeting will be a Board Retreat scheduled for August 24, 2021, at 6:00 pm.

**XI. ADJOURNMENT**

No further matters appearing to come before the Board, **Chair Brown** adjourned the meeting at 11:01 pm.

Recorded by: Jennifer Nelson, Board Secretary

Approved by the Newberg School District Board of Directors on October 12, 2021.

ATTEST:

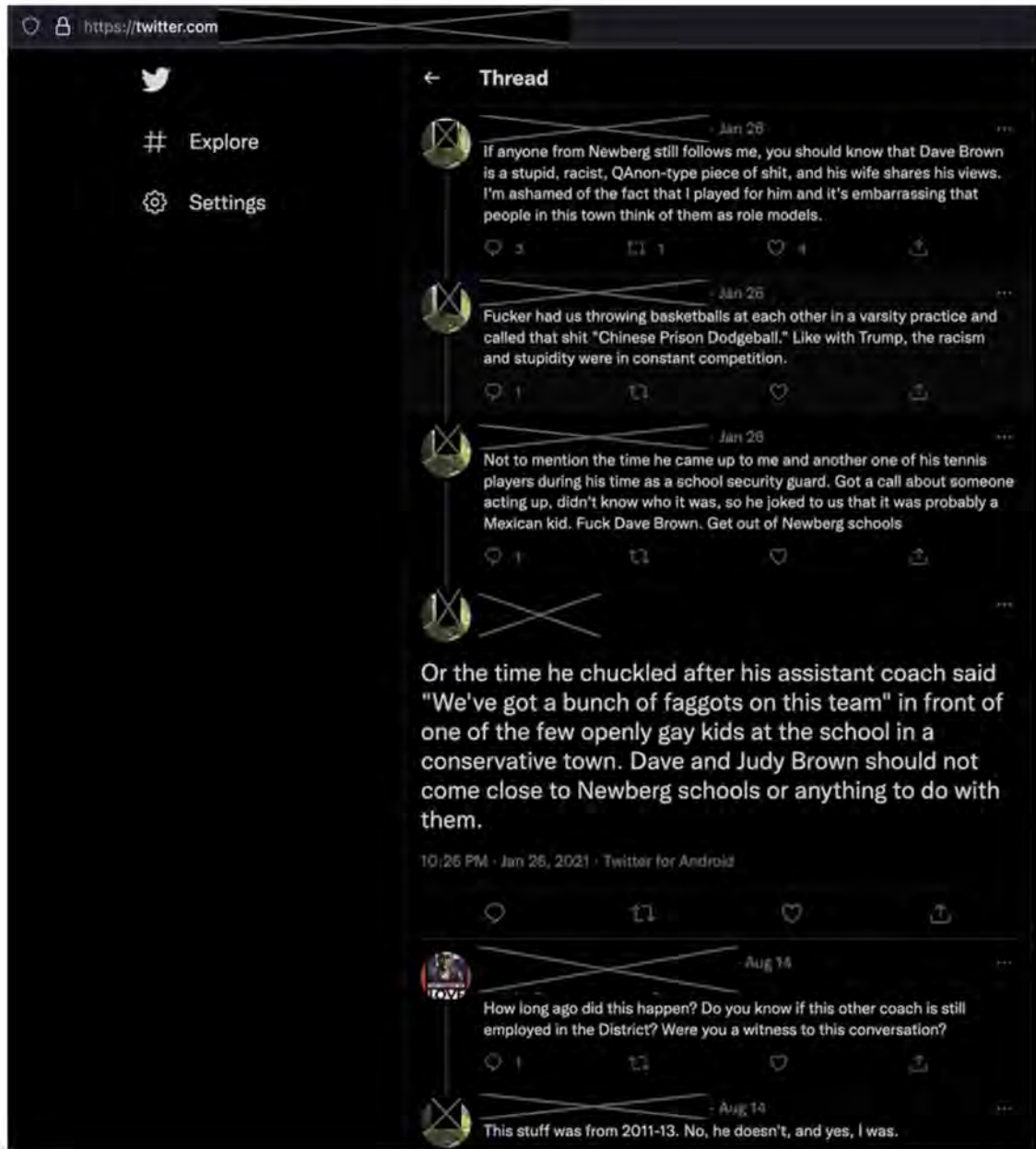


Superintendent

APPROVED:



Board Chair



Sunday, October 31, 2021



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- OPINION (/CANBY-HERALD-OPINION)
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|--|---|

# Brown takes over Canby girls tennis program

Derek Wiley April 01 2020



**Dave Brown was the head boys tennis coach at Newberg for 20 years before coming to Canby**

CANBY — Getting elected to the Newberg School Board was bittersweet for Dave Brown.

While he was able to make a bigger impact in his community, Brown was no longer allowed to coach the high school's boys tennis team.

"I had to choose between 40 tennis boys and 5,000 kids in the school district," Brown said. "It was a tough choice, but I did not want to stop coaching. I love those kids over there."

Getting the opportunity to coach the Canby girls has made the decision easier.

"I've always really liked Canby," Brown said. "My kids played against Canby in football, basketball, tennis." <https://wallfire.io/users>

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PMG PHOTO: DEREK WILEY - Dave Brown is taking over the Canby girls tennis program after coaching 20 years at Newberg.

everything. The Canby thing was attractive and on my bucket list I always wanted to coach girls at the varsity level, and I never got the opportunity. I coached girls in the summertime, but never as a team. I wasn't looking for this and it just popped up out of nowhere."

Brown would not have coached just anywhere.

"Canby and Lake Oswego are about the only two spots I would have signed up for," Brown said. "Everybody I've met here is great, and a lot of things just fell into place."

Brown decided to run for the Newberg School Board after attending an event in Canby — Franklin Graham's "Decision America Pacific Northwest Tour" at the Clackamas County Fairgrounds and Event Center in the summer of 2018.

Brown had coached the Newberg boys tennis team for 20 years, but felt challenged to get more involved in his community.

"Everything I'd done had revolved around sports," said Brown, who began playing tennis as a sophomore in high school and then started teaching lessons while a student at Portland State University.

Brown has also coached basketball and football.



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(<https://wallit.io/users>)

**Exhibit 6**  
**Page 2 of 3**

He has 48 girls on his first Canby tennis team, including more than a dozen seniors.

The Cougars have yet to play their first match.

The OSAA has suspended practices and contests for all spring sports through April 28 due to the coronavirus.

"There's a lot of seniors and a lot of leadership," Brown said before the season was suspended. "They're great kids."

**Derek Wiley**

Reporter

503-263-6831

email: dwiley@pamplinmedia.com (mailto:dwiley@pamplinmedia.com)

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County of Yamhill  
**VOTERS' PAMPHLET**



**May 21, 2019**  
**Special District Election**

This Voters' Pamphlet is the  
Personal Property of the Recipient  
Elector for Assistance in Voting

Compiled and Distributed by:  
Brian Van Bergen  
Yamhill County Clerk

**Exhibit 7**  
**Page 1 of 9**

**Brian Van Bergen**  
**Yamhill County Clerk**



414 NE Evans St, McMinnville, OR 97128-4607  
Ph. 503.434.7518 • Fax 503.434.7520  
clerk@co.yamhill.or.us

Dear Fellow Yamhill County Voter,

This is your Yamhill County Voters' Pamphlet for the May 21, 2019, Special District Election. This pamphlet provides a forum for candidates to introduce themselves. You will also find information about various measures for your consideration. Each jurisdiction submitting a measure prepares its own Ballot Title and Explanatory Statement.

Candidate statements and measure arguments are included in this pamphlet for a fee. If a candidate does not appear in the pamphlet, it is because he or she chose not to be included.

We print the text of each statement or argument exactly as the author submitted it. Text is cut off after exceeding the maximum number of words allowed. The law forbids us from making corrections for punctuation, grammar, syntax errors or inaccurate information. Those submitting statements and arguments for the voters' pamphlet are solely responsible for the content. We cannot create content for those that do not submit statements.

**The Secretary of State draws a random alphabet sortation unique to each election. Candidates appear in that order both in this pamphlet and on the ballot.**

This pamphlet includes all measures and races in the county for this election. However, your ballot will only include those relevant to you.

There is at least one "Official Ballot Drop Site" located in each city in the county. Look for the list of Official Ballot Drop Sites in this pamphlet or on our website. You may deposit your ballot in any drop site listed, 24 hours per day.

**Ballots deposited in an Official Ballot Drop Site get to us postage-free.  
If you mail your ballot, you must apply proper postage.**

Remember, **postmarks do not count**. Your ballot must be in an Official Ballot Drop Site or at the Yamhill County Clerk's Office by **8:00 p.m.** on Election Day, **May 21, 2019**.

We invite any voter who needs assistance in voting because of any disability to contact us. We will make every effort to meet your voting needs. Please contact us at your earliest convenience.

Sincerely,

A handwritten signature in black ink that reads "Brian Van Bergen". The signature is written in a cursive, slightly stylized font.

Brian Van Bergen  
Yamhill County Clerk

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**Newberg School District 29,  
Director, Zone 6**



**Dave Brown**

**Occupation:** Education — Newberg High School Staff Security; Newberg High School Head Boys Tennis Coach

**Occupational Background:** 20 years working for Newberg Public Schools. In class working with the NHS STAR Program. Past 12

years as Security at NHS. Head Boys Tennis Coach last 20 years. Head Boys Basketball and Assistant Boys Basketball coach for 12 years.

**Educational Background:** Attended Portland Community College for 2 years studying Recreation Management. Spent 1 more year at Portland Community College studying Business Management. Attended 4 years at Newberg High School, 12 years in the Newberg Public Schools. Have attended seminars, workshops, clinics, business camps in marketing, sales, business practices, coaching and human relations over the past 35 years.

**Prior Governmental Experience:** None

**PERSONAL:** I have lived in Newberg for 52 years. Attended Edwards, Central Elementary, Renne Middle School, Newberg High School. Have coached 55 seasons of school sports in Tennis, basketball, football. Have coached 13 years of baseball. Have coached and ran more summer sports camps thru CPRD than any other coach in CPRD history. I have raised 3 sons who attended Dundee, Mountain View, Chehalem Valley Middle Schools, Newberg High School. Have volunteered for classrooms, outdoor schools, field trips, school dances, grad night, athletic events, supervision, announcer, greeting, hosting events. I have the unique perspective of being inside the Newberg Schools and seeing the great things that happen, the struggles that students, parents, staff and administrators face daily. Seeing decisions that impact our students good and bad. We can do a better job and spend less. Actually holding our students to a true higher standard of behavior, expecting more not less from them. Raising the academic bar for all students. Discover each student. Get to know each student. For too long we have ignored wide sections of our student population. Let's expect more and lets deliver. That is my passion and my goal for every student/ athlete that plays for me. We deliver, the students achieve and advance and Newberg and the community all win. I will

*Information furnished by David A Brown*

The above information has not been verified for accuracy by the county.  
Printed exactly as submitted.

**Newberg School District 29,  
Director, Zone 6**



**Andrea Call**

**Occupation:** Mother, Private Tutor

**Occupational Background:** NSD Substitute, Elementary School Librarian

**Educational Background:** Utah State University, Merchandising/ Marketing, Bachelor of Arts

**Prior Governmental Experience:** None

Dear Voter,

Thank you for reading this and for voting.

My husband Allan and I moved to the area over 20 years ago. We are parents of five children, all of whom have attended or still attend Newberg Public Schools. In those years I have worked along side and have come to love and appreciate many of the teachers my children have learned from, as well as the administrators who have helped shape the experience they have had within the walls of each school. I have spent hours volunteering and supporting students and staff. I have also had the privilege of working as a substitute and librarian in the Newberg School District. Having been both a parent of students and a staff member in our school community allows me to bring a unique perspective to the board.

I am looking to be a listening ear and active voice for all students, parents, staff, and community members who are invested in making our schools a great place to learn and grow.

Many of you who receive this ballot may wonder, "Why should a school board seat matter to me?" Strong schools do not just educate students academically, but teach students how to work with others, how to be productive, how to problem solve, and how to be citizens. **A stronger local school system will build a stronger Newberg.**

**Exhibit 7  
Page 6 of 9**

*Information furnished by Andrea Call*

The above information has not been verified for accuracy by the county.  
Printed exactly as submitted.

**Newberg School District 29,  
Director, Zone 7**



**Brian Shannon**

**Occupation:** Technology Project Manager/Father

**Occupational Background:** Financial Advisor

**Educational Background:** University of California, Davis, History, Bachelor's Degree

**Prior Governmental Experience:** None

I'm running for School Board because right now Newberg's schools are leaving too many of our children behind. Despite the District spending over \$49 million dollars a year on education, 1 out of 5 Newberg High School students are not on track to graduate. If this continues unabated, the result will be a Newberg that is poorer and less safe for all of us. For the sake of our children and our community, we must do better!

I believe the answer lies in greater engagement with parents and our community. A school district is a community organization. It belongs to all of us, and we will only get out of it as much as we are willing to put into it. I want to increase opportunities for everyone to have a say in how our schools are run by leveraging Newberg's strong fabric of community organizations. The problems we face are solvable, if we all work together to find solutions.

On the budget, I will be a strong voice for a conservative fiscal policy that prioritizes a healthy reserve fund during good years in order to avoid more severe cutbacks in leaner years. This means truly setting priorities about what is really important and what we can live without. It means that sometimes we will need to say, "No." After the traumatic round of budgeting our school system just endured, we should all appreciate the need for such an approach. I will also steer the District away from leaning on bond issuances, which I consider akin to putting family expenses on a credit card.

I don't have all the answers. No one person does. But I will listen to you, I will ask tough questions, and I will put in the long hours needed to find a solution to the problems facing our schools.

I ask for your vote.

*Information furnished by Brian Shannon*

The above information has not been verified for accuracy by the county.  
Printed exactly as submitted.

**Newberg School District 29,  
Director, Zone 7**



**Lydia Keuler**

**Occupation:** Mom

**Occupational Background:** Accountant

**Educational Background:** Grant High School; Portland Community College; University of Oregon

**Prior Governmental Experience:** Newberg School District Board of Directors

**Friends and neighbors,**

My husband and I moved to Newberg 2 years ago to start our family and are proud parents to a 20 month old son and expecting a baby girl to arrive by the time this election is complete. We absolutely love the City of Newberg and are so thrilled to have chosen it as our home. A year ago I had the opportunity to join the Newberg School Board of Directors as the Zone 7 representative and have been serving in that capacity since. I want our schools to offer the best possible experience and education for our Newberg and Dundee youth.

Oregon is struggling to provide our schools with the funding needed to provide excellent services and we often must make due with less and less. I am committed to my duty as a member of your school board to make decisions that are best for kids and will continue to advocate for school funding in Salem with our legislature.

It has been an honor to serve my community and I look forward, with your vote, to continuing that service for the next four years. Please contact me at keulerl@newberg.k12.or.us if you have any questions or comments.

*Information furnished by Lydia Keuler*

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Printed exactly as submitted.

**Yamhill County Clerk**  
 PO Box 7515  
 McMinnville, Oregon 97128-7515

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## Residential Customer

### NOTICE

You may deliver your voted ballot to the following Yamhill County Official Ballot Drop Sites, 24 hours a day — 7 days a week.  
 All drop sites close at 8:00 p.m. Election Day, May 21, 2019.

# Yamhill County Official Ballot Drop Sites

**Amity**

Amity City Library  
 307 S Trade Street

**Dayton**

Dayton City Hall  
 416 Ferry Street

**Lafayette**

Lafayette City Hall  
 486 3rd Street (99W)

**McMinnville**

Yamhill County Clerk's Office  
 414 NE Evans Street

**Carlton**

Carlton City Hall  
 191 E Main Street

**Dundee**

Dundee City Hall  
 620 SW 5th Street

**McMinnville**

Chemeketa - McMinnville Campus  
 288 NE Norton Lane

**McMinnville**

Courthouse (inside lobby)  
 535 NE 5th Street

**McMinnville**

Courthouse Drive-Through Drop Box  
 East end of Courthouse Parking Lot  
 Enter on 5th and Ford Streets

**Newberg**

Jaquith Park - West  
 1215 N Main Street

**Newberg**

Newberg Public Safety Parking Lot  
 401 E 3rd Street

**Newberg**

PCC - Newberg Center Parking Lot  
 135 Werth Boulevard

**Sheridan**

Sheridan City Hall  
 120 SW Mill Street

**Willamina**

Willamina City Hall  
 411 NE C Street

**Yamhill**

Yamhill City Hall  
 205 S Maple Street



Edit

## Newberg Equity in Education (NEEd)

Private group · 647 members



Newberg Equity in E...



Invite



Admin · August 15 · 🌐

Chair Brown is currently employed by the Canby School District as the girls tennis coach.

**If you know of students who have been coached by Chair Brown, please encourage them to share their stories/concerns with the Canby Athletic Director:**

Benjamin Winegar

Associate Principal / Athletic Director - Canby High

(503) 263-7204 ext. 5304

winegarb@canby.k12.or.us

<https://www.osaa.org/teams/43177>

<https://pamplinmedia.com/.../460445-374489-brown-takes...>



Exhibit 8  
Page 1 of 3





PAMPLINMEDIA.COM

### Brown takes over Canby girls tennis program

Dave Brown was the head boys tennis coach at Newberg for 20 y...

[View Insights](#)

377 Post Reach

👍👎 15

14 Comments

Like

Comment

All Comments



Jere Witherspoon  
Great idea!

Like · Reply · 10w



Kim Bibbee Heater  
Marianne Krupicka

Like · Reply · 10w



Jeff McDonough  
I have a friend connected to this athletic program.  
We're having this conversation.

Like · Reply · 10w



Shyla Jasper  
Dave quit coaching tennis in Newberg in 2018/2019? Is that correct?

Like · Reply · 10w



Aj Schwanz Admin  
I believe so. He was elected May 2019.

Like · Reply · 10w



Heidi Hopkins  
Emily Chlumak I think I saw that Grace was in touch with some such stories from students.

Like · Reply · 10w



Isamar Ramirez  
Maybe he should try to destroy another district and leave ours alone 😂😂 #sorrynotsorry or just leave the schools alone altogether and stick to coaching

Like · Reply · 10w



Kellie Betcher  
Isamar no. We stand for ALL children.

Like · Reply · 10w



Isamar Ramirez  
Kellie Betcher it was a joke!!! Yes we do! That's why I added leave the schools alone altogether and stick to coaching 😂😂

Like · Reply · 10w





because I'm from Canby,

Like · Reply · 10w



Hazel Grace

I reached to a friend in Canby. Let him know who is and what he stands for.

Like · Reply · 10w · Edited



Hazel Grace

I don't know much about the Newberg Nation tagline but is that something to use to get students that we might not be able to reach? Just a thought..

Like · Reply · 10w



Laura J Nottingham-Nunn

He's an ass hole. Personal experience

Like · Reply · 10w



Melanie Springer Mock

I wrote to the Canby AD on Sunday, and got a pretty quick reply from him that they are looking in to the statements posted about Dave Brown on Twitter, as well as school board stuff.

Like · Reply · 10w · Edited



Write a comment...



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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

|                                  |   |                               |
|----------------------------------|---|-------------------------------|
| TREVOR DEHART, RENEE POWELL,     | ) | Case No. 21YAM0001CV          |
| BRIAN SHANNON, and DAVE BROWN,   | ) |                               |
|                                  | ) |                               |
| Plaintiffs,                      | ) | PLAINTIFFS' JOINT RESPONSE TO |
|                                  | ) | DEFENDANTS' MOTIONS TO STRIKE |
| vs.                              | ) | AND DISMISS COMPLAINT         |
|                                  | ) |                               |
| DEBBIE TOFTE, KATHERINE BARNETT, | ) |                               |
| AJ SCHWANZ, and TAMARA           | ) |                               |
| BROOKFIELD,                      | ) |                               |
|                                  | ) |                               |
| Defendants.                      | ) |                               |

Comes now Plaintiffs Trevor DeHart, Renee Powell, Brian Shannon, and Dave Brown, by and through their attorney, Daniel E. Thenell, and offers this response to Defendants Tofte, Schwanz, and Brookfield's Special Motion to Strike under ORS 31. 150.

**PROCEDURAL POSTURE**

Plaintiffs have previously filed a notice of voluntary dismissal as to Plaintiff Powell's Claims against Defendant Barnett. Defendant Barnett was the first of the four original Defendants to file a motion under Oregon Anti-SLAPP statute and the remaining Defendants' motions expressly joined and incorporated the Barnett motion into their respective motions. Plaintiffs have







1 their burden of production on the required elements of HB 3047. Any conflict between the Anti-  
2 SLAPP and Anti-Doxxing statutes should be resolved in favor of the later. The Court is obliged to  
3 interpret HB 3047 to be constitutional. Because of these compelling arguments and the weight of  
4 authority, Defendants' motions should each be dismissed in their entirety.

5 DATED: this 11<sup>th</sup> day of November 2021.

6  
7  
8 THENELL LAW GROUP, P.C.

9 By: /s/ Daniel E. Thenell  
10 Daniel E. Thenell, OSB No. 971655  
11 Dan@ThenellLawGroup.com  
12 *Of Attorney for Petitioner*

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

TREVOR DEHART, RENEE POWELL,  
BRIAN SHANNON, and DAVE BROWN,

Petitioner,

vs.

DEBBIE TOFTE, KATHERINE BARNETT,  
AJ SCHWANZ, and TAMARA  
BROOKFIELD,

Respondent.

) Case No. 21YAM0001CV

) DECLARATION OF DAVE BROWN

I, Dave Brown, hereby declare the following:

1. I am over the age of eighteen and make this declaration based on my knowledge.
2. I am employed by the Canby School District.
3. I did not consent to the disclosure of my private information by Aj Schwanz.
4. I was harassed by the disclosure of the contact information for my employer by Aj Schwanz.
5. I was subjected to severe emotional distress by Aj Schwanz, such that I experienced and continue to experience anxiety, fear, and apprehension.
6. The anxiety, fear, and apprehension that I continue to experience has physically manifested for a protracted amount of time. I have had trouble sleeping for at least three

1 months. I also wake up to any noise that I hear in my house which has heightened the  
2 anxiety I face daily.

3 7. Before the disclosure by Aj Schwanz, I had a habit of keeping my home garage door  
4 open. Since the disclosure, I no longer keep my garage door open in fear of someone  
5 entering my garage.

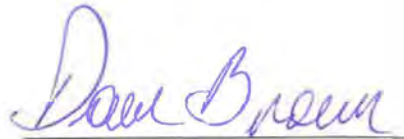
6 8. I believe that a reasonable person would also be harassed by the disclosure of contact  
7 information of their employer.

8 9. Since the disclosure of the contact information of my employer, my relationship with my  
9 employer has been strained. I have felt a difference in the communication with my boss  
10 as communication has died down between us, which I believe is from people calling into  
11 my employer.

12 10. I have reason to believe my employer received unsolicited contacts in response to  
13 Defendant Schwanz's posting.

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17 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF  
18 MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE  
19 AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.  
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21  
22 DATED: this 12<sup>th</sup> day of November, 2021.



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24 Dave Brown

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

TREVOR DEHART, RENEE POWELL,  
BRIAN SHANNON, and DAVE BROWN,

Petitioner,

vs.

DEBBIE TOFTE, KATHERINE BARNETT,  
AJ SCHWANZ, and TAMARA  
BROOKFIELD,

Respondent.

) Case No. 21YAM0001CV

) DECLARATION OF BRIAN SHANNON

I, Brian Shannon, hereby declare the following:

1. I am over the age of eighteen and make this declaration based on my knowledge.
2. At the time the Facebook post was made, I was employed by Selectron Technologies.
3. I did not consent to the disclosure of the contact information of my employer by Tamara Brookfield.
4. I was harassed by the disclosure of the contact information of my employer by Tamara Brookfield.
5. I was subjected to severe emotional distress by Tamara Brookfield, such that I experienced and continue to experience anxiety, fear, and apprehension.
6. The anxiety, fear, and apprehension that I continue to experience has changed my daily life in a profound way. I can no longer eat out in my community.

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7. I have had to call the police because of activity outside of my house that I believe is connected to the disclosure of information.

8. In order to alleviate the anxiety and apprehension I have faced, I have installed a video camera outside of my house.

9. I have also had issues sleeping for a number of months because of the stress this has placed on me and my family.

10. I have been terminated from my employment at Selectron Technologies and I believe it was a direct result of people contacting my employer after Brookfield disclosed their contact information.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED: this 11<sup>th</sup> day of November, 2021.

*Brian Shannon*

Brian Shannon (Nov 11, 2021 09:38 PST)

Brian Shannon

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

|   |   |                              |
|---|---|------------------------------|
| TREVOR DEHART, RENEE POWELL,<br>BRIAN SHANNON, and DAVE BROWN,            | ) | Case No. 21YAM0001CV         |
|   | ) |                              |
| Petitioner,   | ) | DECLARATION OF TREVOR DEHART |
|   | ) |                              |
| vs.   | ) |                              |
|   | ) |                              |
| DEBBIE TOFTE, KATHERINE BARNETT,<br>AJ SCHWANZ, and TAMARA<br>BROOKFIELD, | ) |                              |
|   | ) |                              |
| Respondent.   | ) |                              |
|   | ) |                              |

I, Trevor DeHart, hereby declare the following:

1. I am over the age of eighteen and make this declaration based on my knowledge.
2. I am employed by Lam Technologies.
3. I did not consent to the disclosure of the contact information of my employer by Debbie Tofte.
4. I was harassed by the disclosure of the contact information of my employer by Debbie Tofte.
5. I was subjected to severe emotional distress by Debbie Tofte, such that I experienced and continue to experience anxiety, fear, and apprehension.
6. The anxiety, fear, and apprehension that I continue to experience has changed where I go out to eat and I now have to be conscious about where I am in public places.

- 1 7. I have experienced restless nights on a frequent basis for many months. I have also placed  
2 personal protection nearby when I sleep.  
3 8. I have increased anxiety both at home and away in the form of situational awareness.  
4 Because of this anxiety I have experienced mental and physical exhaustion.  
5 9. I have reason to believe my employer received unsolicited contacts in response to  
6 Defendant Tofte's posting.  
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12 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF  
13 MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE  
14 AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.  
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17 DATED: this 11<sup>th</sup> day of November, 2021.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

**Trevor DeHart, Renee Powell,  
Brian Shannon, and Dave Brown,**

Plaintiffs,

v.

**Debbie Tofte, Katherine Barnett,  
A.J. Schwanz, and Tamara Brookfield,**

Defendants.

Case No: 21YAM0001CV

**Defendants Tofte, Schwanz, and  
Brookfield’s Reply in Support of Special  
Motion to Strike Under ORS 31.150**

Judge Chapman  
December 1, 2021, at 9:30 A.M.  
By WebEx

**INTRODUCTION**

This case is not about doxing. It is not about the public disclosure of private information. It is not about harassment, or stalking, or any of the other ills at which HB 3047 was aimed. This case is about whether elected officials may use judicial process to throttle their constituents’ political speech.

Defendants—teachers, parents, and Newberg voters—took to a public forum to protest Plaintiffs’ actions as publicly elected Directors of the Newberg School Board. They discussed information that was publicly available—indeed, information that each Director initially disclosed. They sought to hold the Directors accountable for the controversial policies they had enacted and change the Directors’ conduct in office. Their posts were core political speech—the stuff of which democracy is made. Such speech is entitled to the highest First Amendment protection. *McIntyre v. Ohio Elections Comm’n*, 514 US 334,



1           1.       *Brookfield expressly disavowed any intent to harass in her posting.*

2           When she posted the general company phone number for Selectron Technologies,  
3 Brookfield expressly implored readers to stick to the facts. “[A]void hearsay,” she advised,  
4 and share only “*demonstrated* behavior.” Brookfield Decl. ¶ 8 (emphasis added). It cannot  
5 be that one can show an intent to harass by encouraging the sharing of truthful facts.

6           2.       *The Directors have no evidence that Brookfield’s posting caused Shannon to be  
7 stalked, harassed, or injured.*

8           It is unreasonable to infer that Brookfield’s post in August about Shannon’s  
9 employer’s phone number is the cause for Shannon’s stated feelings in October and  
10 November of avoiding eating food “in [his] community,” carrying a weapon, being  
11 sleepless at home, or putting a camera outside of his home during a highly charged and  
12 ongoing political controversy in which he finds himself at the center. Shannon Decl. ¶¶ 6–  
13 9. Brookfield posted no information about Shannon’s home. Selectron Technologies is in  
14 Portland, not Newberg where Shannon resides. Brookfield Decl., Ex. 2. Shannon did not  
15 assert in his complaint that he lost his job nor describe any other economic harm, let alone  
16 present evidence that Brookfield caused those harms. While Shannon now asserts in a  
17 declaration attached to Plaintiffs’ Response that he was terminated and that he subjectively  
18 believes it is “a direct result” of Brookfield’s post, there is no evidence presented to show  
19 that direct connection. *See* Shannon Decl. ¶ 10.

20       **IV. If it applies to Defendants’ conduct, the anti-doxing statute is  
21 unconstitutional.**

22           Defendants posted truthful information about a matter of public significance.  
23 Statutes that punish such conduct rarely pass constitutional muster. *Bartnicki v. Vopper*,  
24 532 US 514, 527 (2001). When they are used to target speech about public officials, they  
25 are even more constitutionally suspect, because of their chilling effect on public debate.  
26 *Sullivan*, 376 US at 279 (“would-be critics of official conduct may be deterred from  
voicing their criticism, . . . because of doubt whether [the statement’s lawfulness] can be

1 proved in court or fear of the expense of having to do so”).

2 A remarkably similar case from California, in which a court held that a statute that  
3 prohibited publication of legislators’ home addresses and telephone numbers was likely  
4 unconstitutional, illustrates the point. *Publius*, 237 F Supp 3d at 1017–21. The court  
5 there reasoned that such information was “relevant to issues of public significance,” and  
6 thus that “its truthful dissemination—particularly when already in the public domain and  
7 lawfully obtained—triggers exacting First Amendment scrutiny under Supreme Court  
8 precedent.” *Id.* State officials may not punish the publication of such information absent  
9 the need of the highest order. *Id.* Any law that seeks to meet that need must be narrowly  
10 tailored. *Id.*; *Florida Star v. B.J.F.*, 491 US 524, 540–41 (1989). The California statute  
11 was not narrowly tailored for many reasons, including that it did not differentiate between  
12 true threats and mere subjective feelings, and that it did not differentiate between  
13 information newly disclosed and information already in the public domain. *Publius*, 237 F  
14 Supp 3d at 1019–20.

15 So too here. If Defendants can be held liable on the Directors’ threadbare  
16 allegations of subjectively feeling threatened, then HB 3047 does not distinguish between  
17 true threats and mere subjective feelings. If Defendants can be held liable even though all  
18 of the information they posted was already public and had mostly been publicized *by the*  
19 *Directors*, then it does not differentiate between information newly disclosed and  
20 information already in the public domain. So *if* it applies to Defendants, the anti-doxing  
21 statute is not narrowly tailored and therefore is unconstitutional. *See Publius*, 237 F Supp  
22 3d at 1017.

23 But it need not be so. The Directors appear to argue that the court *must* interpret  
24 statutes to be constitutional, Pl. Resp. at 21, and they are half right. Courts must  
25 “construe a statute to avoid constitutional concerns.” *City of Lebanon v. Milburn*, 286 Or  
26 App 212, 216 (2017). Here, the constitutional concerns can be avoided by interpreting

1 the term “disclose” according to its plain and ordinary meaning, as set forth in Part II.B  
 2 above, or by holding that a reasonable public official cannot be harassed or injured by the  
 3 republication of information that they themselves made public, as set forth in Part II.C  
 4 above. The Court should so interpret the statute and dismiss the Directors’ claims.

### 5 CONCLUSION

6 The anti-SLAPP statute applies to the Directors’ claims. The Directors have failed  
 7 to show that there is a probability that they will prevail on the merits. This Court therefore  
 8 should enter judgment dismissing the Complaint without prejudice, and award Defendants  
 9 attorney fees and costs, jointly and severally, upon application.

10  
 11 Dated: November 26, 2021

PUBLIC ACCOUNTABILITY

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13 Athul K. Acharya (he/him)

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 23 *Accountability*

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26 ACLU FOUNDATION OF OREGON, INC.

506 SW 6th Avenue, Suite 700

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**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL**

**Trevor DeHart, Renee Powell,  
Brian Shannon, and Dave Brown,**

Plaintiffs,

v.

**Debbie Tofte, Katherine Barnett,  
A.J. Schwanz, and Tamara Brookfield,**

Defendants.

Case No: 21YAM0001CV

**Declaration of Beth Woolsey**

I, Beth Woolsey, declare as follows:

1. I am over the age of 18 and am a mother to children who attend Newberg public schools. Except as otherwise indicated, I make this declaration upon personal knowledge. If called upon to do so, I would testify truthfully as follows.

2. I am an administrator of the Newberg Equity in Education (NEEd) Facebook group. NEEd arose in the summer of 2020 because many parents (including me) were puzzled and concerned after Director Dave Brown, a member of the Newberg School Board, cast the sole vote against Resolution 2020-04, which was called *A Resolution of the Newberg School Board of Directors Condemning Racism and Committing to Being an Anti-Racist School District*.

3. As an administrator of NEEd, I am familiar with why the group is hosted on Facebook, why we decided to make the group “private,” and what people need to do to gain access to the group.

1           4.     As for the choice to use Facebook, we selected that platform because it is  
2 ubiquitous, and we believed that most people who would want to participate in the  
3 discussions would already have a Facebook account. It's also free to use, which removes the  
4 financial barrier to access the group—so long as a person has a way to connect to the  
5 internet, they can use Facebook and request to join NEEEd.

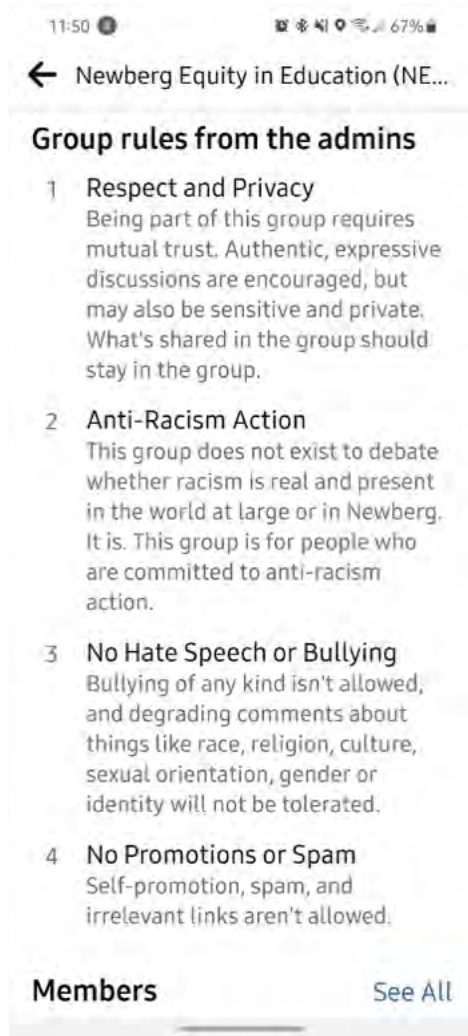
6           5.     NEEEd is a “visible private group” on Facebook, which means that someone  
7 needs to request to join, and an administrator must approve their request, before they can  
8 see the group's posts or post to the group themselves. We decided to make NEEEd a  
9 “private” group so that we could communicate our group's purpose and the tone of mutual  
10 respect we expect from all of our members; ask people to fill out a couple of questions to  
11 help confirm that they understand our group's purpose and agree to engage in respectful  
12 and civil discourse; and ensure that the group stays focused on promoting equity in  
13 Newberg Public Schools.

14          6.     Anyone who has a Facebook account can request to join NEEEd at any time.  
15 To do so, they can search for “Newberg Equity in Education” using Facebook's search tool  
16 and click a button that says “request to join.” We had the option to make the group a  
17 “secret private group” on Facebook, which would have limited access to the group by  
18 requiring that a person have an invitation to join from a current member (in other words,  
19 NEEEd would not have shown up in any searches using the Facebook search tool). We  
20 chose not to do that because we wanted all members of the public with a Facebook account  
21 who may desire to join the group to have access to it, not just those whom our members  
22 already know.

23          7.     For every person who requests to join NEEEd, we prompt them to answer  
24 two questions: (1) “Membership in the Newberg Equity in Education group is limited to  
25 folks seeking to further anti-racism and pro-equity protections in Newberg Public Schools.  
26 Why do you want to join this group?”, and (2) “What is your relationship to or

1 involvement in Newberg Public Schools?” We do not require that people have a direct  
2 affiliation with our school district (e.g., be students, parents, or teachers) or that they even  
3 live in Newberg, but we do want to know that they have some nexus to the group or its  
4 purpose.

5 8. In addition to answering those questions, requesters must affirmatively state  
6 they will abide by our “group rules.” The below is a true and accurate screenshot I took of  
7 the group rules we have had in place since we formed the group:



1           9.     Even if people are denied access to the group because they fail to fill out the  
2 questions in a timely manner, they can always reapply to join the group again when they  
3 have time to answer the questions.

4           10.    Furthermore, we are not actually able to limit membership in the group so  
5 long as people answer the questions, because people can and do answer them falsely in  
6 order to gain access to the group. In fact, we have had several people join NEEd who  
7 oppose our group’s purpose by answering our questions in a way that will grant them  
8 access to the group. Sometimes, they make themselves known by posting racial or  
9 homophobic slurs; other times, they simply “lurk” in the group (reading our posts but not  
10 participating in the discussion). Thus, there really is no ability to “manage” who is in the  
11 group and it really is open to anyone who answers the questions.

12          11.    Although we ask for members of the group to show respect for one another  
13 by maintaining privacy, we know that even posts to “private” groups on Facebook are still  
14 posts on the internet, which is hardly a private place. We have even seen that some people  
15 joined the group so they could take screenshots or use some other means to widely share  
16 our posts with the broader public. That kind of thing is neither surprising nor  
17 unexpected—we are, after all, posting on the internet. I have reminded our members that  
18 their posts are not private on several occasions.

19          12.    By way of example, attached as **Exhibit 1** is a true and accurate excerpt of a  
20 blog post from Carey Martell, in which it is clear that he joined NEEd so he could  
21 screenshot the group’s posts and publish them on his own website. The full post, which is  
22 over 900 printed pages long, can be found here:

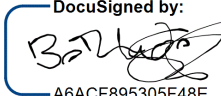
23 [https://careymartell.com/2021/10/meet-the-newberg-oregon-mafia-led-by-elected-](https://careymartell.com/2021/10/meet-the-newberg-oregon-mafia-led-by-elected-officials-and-other-community-leaders/)  
24 [officials-and-other-community-leaders/](https://careymartell.com/2021/10/meet-the-newberg-oregon-mafia-led-by-elected-officials-and-other-community-leaders/).

25           I hereby declare that the above statement is true to the best of my knowledge and  
26 belief, and that I understand it is made for use as evidence in court and is subject to penalty

11/25/2021

1 for perjury.

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DocuSigned by:  
  
By: A6ACF895305F48E...  
Beth Woolsey



# Exhibit 1



MISC.

# Meet the Newberg, Oregon Mafia Led by Elected Officials and Other Community Leaders

BY CAREY MARTELL - OCTOBER 12, 2021 - 274 MINS READ

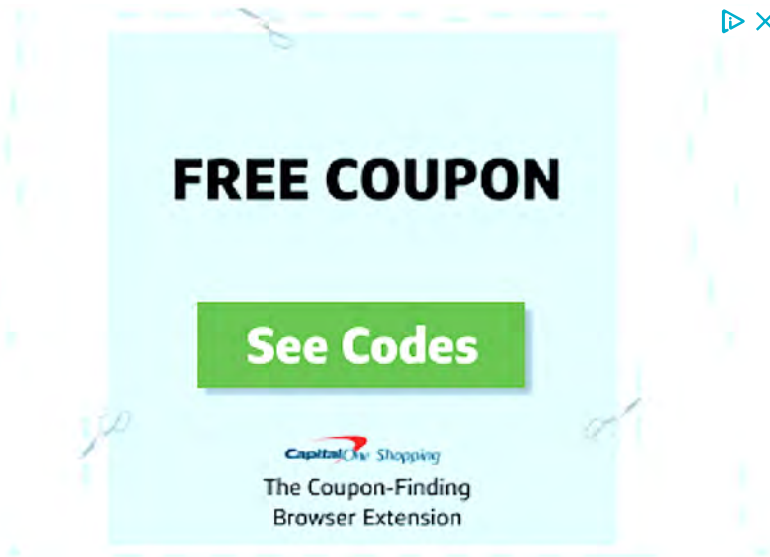
Today I bring the residents of Newberg, Oregon information about an investigative report I have been working on for the past several weeks. Prepare to learn the truth about everything you've been reading in the news that has been designed to mislead you.

Watch This Video Now - Newberg, Oregon Mafia Intro



Please note that this is a very long article. There is a lot of information to convey because there is a lot involved in fully understanding what is happening inside Newberg, Oregon schools and city government. **This involves the presence of a cult who has unusual beliefs that the average resident does not understand** and the only way the motivations for their behavior can be understood is if you understand the beliefs of the cult, **which I explain in this article**, too.

You can also watch the FIVE EPISODE podcast version of this article on YouTube [by clicking here.](#)

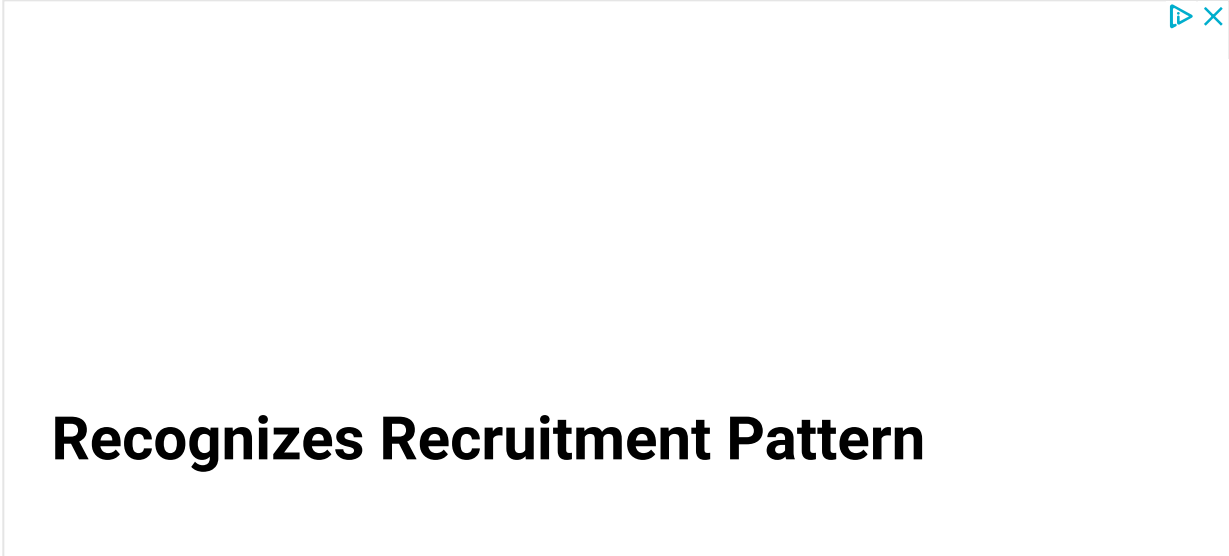


**I will lecture. I will rant.** Your narrator is a veteran of the US Army and I am revealing to you a story of corruption that has taken place in my hometown. I served with soldiers who died defending American liberty. As a veteran, the task falls upon me to be a speaker for the dead, for those who have died for liberty and democracy, so that such a thing that has occurred in Newberg would never occur.

Yet, it has occurred and so their sacrifices have been tainted. I am filled with righteous fury and I shall not hide my emotion as I criticize those who have chosen tyranny over



clearly been forgotten. The rhetoric I use shall do this, so that our society may pun-  
em for their crimes using the very mechanisms of democracy they so very hate. I  
will have justice for those they have wronged.



## Recognizes Recruitment Pattern

As this corruption involves children, I anticipate many parents will be extremely upset to learn what has taken place. I am against anyone using violence as a remedy for justice, as there are more appropriate solutions for how to deal with this situation, which is why I have taken the time to make the case for criminal activity. I believe our legal system and school board and recalls of public officials can resolve this situation, and I advocate for those solutions to be used.

I do not expect the average person to read this entire article in one setting. You may use the table of contents links to jump ahead to parts that interest you; for example, if you just want to know about certain crimes I believe they are committing ([such as intimidation and coercion of elected officials](#)) you can read those sections. **This article is very long because my intention is to demonstrate a pattern of racketeering activity**, which requires a lot of documents to be shown and explanation of their activities.

# Carey Martell



Also, not to sound like an e-beggar but I am an independent reporter. I am not part of any other media organization except my own small company. This article is exposing around 600 people as part of what I believe to be a criminal conspiracy and I anticipate they will try to sue me for libel despite all the evidence I show here. In reading this article, you will see they have already discussed suing me for libel over my past articles criticizing their activities, as they want to censure me. If you'd like to contribute to my legal defense fund so I may continue reporting on their activities, [this is a link to my donation page](#). (Gofundme deplatformed me so I switched to GiveSendGo). Thank you and I hope this article informs you in a way that the *Newberg Graphic* has not.



**UPDATE:** This article now has a [Part 2](#) that focuses on the large Progressive Yamhill group that is the parent group to Newberg Equity in Education.

## 2 Introduction



Note for Parents in the Newberg Public School District

→ → Note for Current Students of the Newberg Public School District

5 Some Legal Disclaimers and Explanations

6 Who is the Newberg Cult Mafia?

6.1 The Full List of NEEd Mafia Members

7 A Short Discussion About Kristen Stoller, President of the Newberg Education Foundation

8 What Is the Goal of the Newberg Equity in Education Mafia Cult?

8.1 What Critical Race Theory Actually Is

8.2 How the NEEd Group Used Critical Race Theory To Create a Cult in a Small Town That Never Had Slavery In It

8.3 What Critical Race Theory Beliefs Cause Teachers and Parents To Do

8.4 How Does Critical Race Theory Impact Teacher Decisions In Disciplinary Matters and Policies?

8.5 What Does LGBTQ Have to do with Critical Race Theory?

8.6 Critical Race Theory And Fringe Gender Identity Theories is Everywhere in the Education System in America, But Especially Oregon

8.7 The “Health Class” Curriculum Taught to Newberg School District Kids Is Disturbing

8.8 Newberg Equity in Education Exists For Teaching Critical Race Theory to Kids

8.9 Proof That NEEd is a Cult Using Psychologically Manipulative Tactics to Control its Mob

8.10 Tai Harden-Moore Admits Her Definition of Racism is Prejudice + Power, Just Like I Said It Was

9 How is the NEEd Mafia Cult Organized?

10 Who Else Is in the Newberg Equity in Education Mafia?

10.1 The Most Important Members Of the Mafia To Mention

10.2 The Newberg Teacher’s Union

10.3 Is The Hatch Act Relevant? I Believe So, Yes

10.4 How Newberg Public School District Teachers in NEEd Are Violating the Hatch Act

10.5 US Tax code and union activities violations

10.6 Coercion of the students by the teacher’s union to participate in political activities during school hours

10.7 Joe Morelock’s Connections to NEEd

10.9 NEED Group IS Engaging in Seditious Acts



10 Oregon Board of Education Abuses To Assist NEED

10.11 Casey Kulla Activities Within the Mafia Group

10.12 City of Newberg Employees and Appointees in the NEED Mafia

11 List of Newberg Public Library Employees Who Are Participants in the NEED Mafia

12 List of Important Newberg School Teachers and Faculty Who Are Participants in the Mafia

12.1 What is the Definition of a Conflict of Interest, Legally?

13 Newberg Public Schools Board Members And Their Activities As Part of the NEED Mafia

13.1 Tai Harden-Moore and Her Activity Inside the NEED Mafia

13.2 Evidence of Hate Crimes Committed by Tai Harden-Moore and the Mafia Group

13.3 Evidence of Coordinated Efforts by NEED Members to Manipulate Public Perception of Past School Board Meetings

13.4 Evidence of Coordinated Harassment By the Mafia to Intimidate Any Citizen Who Dissents

13.5 Evidence of Intentions to Organize Violent Mobs

13.6 Evidence of Stalking Newberg School Board Members

13.7 Evidence of Coordinated Efforts by the Mafia to Intimidate School Board Members To Change Their Voters or Resign

13.8 NEED Mafia Intimidation Tactics are Violation of Voter Intimidation Laws

13.9 Illegal Financial Benefit (Favors) Provided To Businesses and Individuals Who Assist With Intimidation of Elected Officials

13.10 All Members of the Mafia Who Observed the Criminal Acts and Did Not Report Are Complicit in the Crimes Per Federal Law

13.11 How The Intimidation and Recall Effort Is Part of a Larger Conspiracy Involving County Officials

13.12 NEED Encouraging Members to Get the ACLU to Sue The School

13.13 NEED Discusses Inviting Church of Satan To Visit Newberg Schools

14 Evidence of NEED Mafia Coordinating Press Coverage With “Journalists” to Manipulate the Narratives

14.1 NEED Manipulating the “Newberg Businesses Are Being Boycotted” Narrative As a Way to Intimidate and Deceive

14.2 The Truth About The ‘Slave Trade’ Snapchat Group Incident Involving a Student; It Was Intentionally Misreported by NEED



15 Use of NEED to Spam the School Board, Coordinated by School Board Councilors Brandy

der and Rebecca Piros

15.1 Use of Chehalem Cultural Center to Distribute Critical Race Theory Propaganda

16 List of George Fox University Employees In the Mafia

17 Newberg Churches Have Been Infiltrated

18 Members Involved With NEED Who Are Veterans

19 Members Involved With Various Political Non-Profit Groups and Other Charitable Companies

20 NEED Members and Associates Who Own or Work for Businesses Based In Newberg

21 Various Licensed Professionals Who May Have Breached Organizational, State and Federal Laws Related to Their Occupations

21.1 Oregon Wineries and Vineyards Who Support the Critical Race Theory Cults

22 Outrageous Lies Against My Character Said by NEED In a Pathetic Effort to Discredit Me

23 Evidence of Collusion from Surrounding Cities and Interference in Newberg Politics

24 Members of the Press Who Are Part of the Mafia

25 Evidence of Out of Area Political Interference in Local Newberg Politics Organized by Tai Harden-Moore and Her Supporters

25.1 Recall Brian Shannon PAC Campaign Financing Contributors Documents

26 Why the Newberg Mafia is an Actual Mafia Per RICO

27 The Group Is A Criminal Conspiracy Under Oregon Law

27.1 The actions of Oregon Board of Education Director, Guadalupe Martinez Zapata and how it influences the actions of other members in the group.

27.2 The actions of every Newberg school faculty member who is a member of NEED and its activities,

27.3 The actions of Newberg high school principal Tami Erion, other NHS administrators, and Newberg school district Superintendent Joe Morelock

27.4 The actions of Tai Harden-Moore and how it influences other members of the group

27.5 The actions of the collective NEED group to get Brian Shannon and Renee Powell terminated from jobs and/or loss of business as means of intimidation to vote a certain way or resign from office,

27.6 The failure of every member of NEED to report any of this wrongdoing,

27.7 Conclusion of the consideration of wrongdoing

28 How Did I Get All Of This Information So Quickly





, you will know things about the behind the scenes workings of Tai Harden-  
's organization and its agenda that you never would have thought and you will  
come to the same realization I did; she and her allies have formed a criminal conspiracy  
in our town per [Or. Rev. Stat. § 161.450, "Criminal conspiracy"](#). I also believe their activ-  
ity is a violation of the [Racketeer Influenced and Corrupt Organizations Act \(RICO\)](#), and  
numerous other laws I will explain as I reveal to the public their activities over the past  
year in our town. They existed long before the school board ban on political flags and in  
reality, the school board ban is a reaction to their activities in the hopes of trying to stop  
their indoctrination of the school children into their cult.

**The NEEd organization consists of around 600 members and I have their activities well  
documented, far beyond what is presented in this article.** This article's main purpose is  
to convince the public and the FBI of the presence of criminal activity within their orga-  
nization and expose it so they may be dealt with appropriately by law enforcement and  
their ideology rejected wholeheartedly by every other sane person in my hometown.

**If you were on the fence about whether it's right to ban BLM and pride flags in the  
schools, you won't be after this. You'll understand why it has to be done.**

Here is the list of my previous articles for those who need to catch up to speed on what  
the backstory to this article is,

 [Meet Tai Harden-Moore, the Racist Consultant Employed by Newberg, Oregon City Council At the Heart of the Controversy in Town](#)

3. [My Debate With Tai Harden-Moore, Anti-Racism Activist In Newberg, Oregon](#)
4. [Further Rebuttals of Tai Harden-Moore's Claims](#)
5. [My Debate With Jeff McDonough, School Counselor at Chehalem Valley Middle School in Newberg, Oregon](#)
6. [An Assortment of Debates with Newberg, Oregon Residents Responding to My Exposé Articles](#)
7. [Explaining Why Critical Race Theory Is Erroneous \(A Response to a Rebuttal\)](#)

Otherwise, [read on to learn about the criminal activities of the Newberg Equity in Education \(NEEd\) group.](#)

## **A Note for Parents in the Newberg Public School District**

I highly recommend that you pull your kids out of the school district immediately until you have had a chance to read my entire article. Do not deliver your kids into the hands of these people anymore without knowing what they are teaching and doing.

In this article I provide substantial evidence that the Newberg Education Association (the teacher union) is engaged in seditious acts against our city, state and country and that they are intentionally teaching children both Critical Race Theory and fringe gender identity pseudo-science with the intention that this will help recruit the kids into a cult formed for the purpose of dismantling and rebuilding of America into a segregated society. As outlandish as that sounds, any sane person who sees the communications made

There are many social media groups being used by the same group of people to organize political activity to seize control of Newberg's government using methods I view as unlawful.

The main one, however is [Newberg Equity in Education \(NEEd\) | Facebook](#) ( 557 members at the time I write this, mostly teachers)

The Admins for this group are the following people,

1. [Beth McDonough Woolsey](#) (near as I can tell, [a stay at home mom who blogs](#))
2. [Tai Harden-Moore](#) (owner of [Moore-Consultants](#), a CRT activism firm, previously ran for Newberg school board election and lost)
3. [Lydia Keuler](#) (married to [Dan Keuler](#), senior accountant for City of Newberg)
4. [Kristen Stoller](#) (President of [Newberg Education Foundation](#), co-founder of Community Wellness Collective, President of the Young Professionals of Yamhill Valley, owner of Chehalem Valley Dance Academy, member of the Chehalem Valley Chamber of Commerce, Newberg Early Bird Rotary, and [Newberg Downtown Coalition](#))
5. [Aj Schwanz](#) (near as I can tell, a former Newberg school board committee member)

# ≡ Carey Martell



anti-racism and pro-equity action. [See Less](#)

**Private**  
Only members can see who's in the group and what they post.

**Visible**  
Anyone can find this group.

**Newberg, Oregon**

**Social Learning**

**History**  
Group created on July 13, 2020. Name last changed on August 13, 2021. [See More](#)

## Members - 557



Lydia and 4 other members are admins.

## Activity

**33 new posts today**  
330 in the last month

**557 total members**  
+ 55 in the last week

**Created a year ago**

# ≡ Carey Martell



anti-racism and pro-equity action. [See Less](#)

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+ 55 in the last week

Created a year ago

# Carey Martell



## Beth McDonough Woolsey

Posts About Friends 1402 Photos Videos Check-Ins More ▾

Add Friend Message

**Do you know Beth?**  
To see what she shares with friends, send her a friend request.

Add Friend

### Intro

[bethwoolsey.com](http://bethwoolsey.com)

### Posts

Filters

**Beth McDonough Woolsey**  
September 13 at 4:51 PM  
Horrific. Abhorrent. Detestable. Words aren't enough to accurately describe the gross and blatant racism occurring in our school district which has been elevated and encouraged by four school board members--Brian Shannon, Trevor DeHart, Dave Brown, and Renee Powell--and their ban on Black Lives Matter and Pride flags and symbols, their plan to rescind the All Students Belong Policy, and their plan to "reword" the Anti-Racism Policy. Situations like this are why our underre... [See More](#)

**Heidi Schneiter Pender**  
September 13 at 1:57 PM  
I didn't cry Friday night when I found out about there being a social media group chat titled "Slave Trade" involving students from my daughter's high school. Th... [See More](#)

48 7 Comments 2 Shares

Like Comment Share

### Photos

[See All Photos](#)



<https://www.facebook.com/tai.hardenmoore>

Facebook



## Tai Harden-Moore

Posts About Friends Photos Videos Check-Ins More ▾

Add Friend Message

**Do you know Tai?**  
To see what she shares with friends, send her a friend request.

Add Friend

### Intro

- Studied at Eastern Washington University
- Studied at FAMU Law
- Went to Highline Senior High School

### Posts

Filters

**Tai Harden-Moore**  
September 21 at 8:44 PM  
We don't just talk, we about that action! If you're in the Newberg/Portland/Salem/I can get anywhere in my car area, please join us for a rally tomorrow at the flagpole in Newberg! It's up to us to stand up against racism and hate in our community 🇺🇸



### Photos

[See All Photos](#)





# Carey Martell



## Lydia Keuler

Posts About Friends 661 Photos Videos Check-Ins More ▾

Add Friend Message

### Do you know Lydia?

To see what she shares with friends, send her a friend request.

Add Friend

### Intro

- Worked at Wings Seminars
- Former Teller Services Associate at SELCO Community Credit Union
- Former Barista at University of Oregon
- Studied Business and Economics at University of Oregon
- Lives in Newberg, Oregon
- From Portland, Oregon
- Married to Dan Keuler
- Joined October 2007

### Posts

Filters

Lydia Keuler updated her profile picture.  
September 23, 2020



### Photos

See All Photos

https://www.facebook.com/kcoatsmeow

Search Facebook



## Kristen Stoller (Kristen Coats)

ihartcvda.com

Posts About Friends 2132 Photos Videos Check-Ins More ▾

Add Friend Message

### Do you know Kristen?

To see what she shares with friends, send her a friend request.

Add Friend

### Intro

- From McMinnville, Oregon
- Married to Francisco Stoller
- [actionnetwork.org/petitions/stop-the-newberg-school-board-from-banning-pride-bim-and-all-other-signs-symbols-and-flags-in-newberg-school-buildings-except-for-the-american-flag-and-oregon-flag?source=direct\\_link&](https://actionnetwork.org/petitions/stop-the-newberg-school-board-from-banning-pride-bim-and-all-other-signs-symbols-and-flags-in-newberg-school-buildings-except-for-the-american-flag-and-oregon-flag?source=direct_link&)

### Photos

See All Photos



### Posts

Filters

Kristen Stoller  
September 20 at 1:57 PM

The actions of the 4 school board members that began August 10th has clearly empowered and emboldened a NPS staff member to make an insanely inappropriate and racist action. This was FRIDAY.

We were barely sorting out the Slave Trade Snapchat group from last week, the Southridge Soccer players from being removed from the soccer game for their "too large of signs" EVEROLL...last week...to this. Not a day goes by without NEW racist incident in Newberg around Newberg Schools ... See More



# ☰ Carey Martell



# TOGETHER

## NEED PUBLIC SCHOOLS

Aj Schwanz

Posts About Friends Photos Videos

Add Friend Message ...

Do you know Aj?

To see what she shares with friends, send her a friend request.

Add Friend

Intro

Posts

Filters

Photos

See All Photos

Friends

See All Friends

However, NEED has **far more** members than just this, although they have hidden the member list directory to any non-member so that is not obvious to the general public.

They have also formed several other online Facebook pages and groups, which primarily consist of the same members as in NEED. An example is Pride Flag Newberg.



# Carey Martell



Bijoux Harrison-Doherty shared an event.

6h · 🌐

UPDATE: THIS MEETING WILL BE VIA ZOOM. Link in comments  
Tonight!



HAPPENING NOW

## PFLAG Newberg October Monthly Meeting

Jaquith Park - Newberg

Shared to Newberg Dundee Community Group 🍀

☆ Interested

👍❤️👏 6

1 Comment

👍 Like

💬 Comment



Bijoux Harrison-Doherty

<https://pflagnewberg.us7.list-manage.com/track/click...>

US02WEB.ZOOM.US

Join our Cloud HD Video Meeting

Like · Reply · 4h

Many of the members of NEED are teachers in the local school union, [Newberg Education Association](#). The teacher union appears to have been actively used to recruit members for the NEED mafia to serve its agenda.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

Trevor Dehart, Renee Powell, ) Yamhill County  
Brian Shannon and Dave Brown ) No. 21YAM0001CV  
)  
Plaintiff-Respondent, ) COA No. A177995  
)  
v )  
)  
Debbie Tofte, Katherine Barnett, )  
AJ Schwanz, and Tamara Brookfield, )  
)  
Defendant-Appellant. )

**TRANSCRIPT OF PROCEEDINGS**

**Volume 2**

BE IT REMEMBERED that the above-entitled matter came on for hearing before the Honorable Jennifer K. Chapman, Judge of the Circuit Court for the Yamhill, State of Oregon, commencing on the 1st day of December, 2021.

**Appearances :**

Appearing in behalf of the Plaintiffs  
Mr. Emerson Lenon, Attorney At Law

Appearing in behalf of the Defendant Barnett  
Mr. Clifford Scott Davidson, Attorney At Law

Appearing in behalf of all the Defendants  
Ms. Kelly Kathryn Simon, Attorney At Law

Appearing in behalf of all the Defendants.  
Ms. Shenoa L. Payne, Attorney At Law

Appearing in behalf of all the Defendants  
Mx. Rian Peck, Attorney At Law

Appearing in behalf of all the Defendants  
Mr. Athul K. Acharya, Attorney At Law

1 December 1, 2021

2 9:37 a.m.

3 (Judge Chapman)

4 P R O C E E D I N G S

5 MOTIONS HEARING (Anti-Slapp)

6 THE COURT: Okay. Good morning, everyone.

7 This is Judge Chapman. We are on the record in  
8 Dehart et al. versus Tofte -- I'm sorry if I mispronounced  
9 that -- et al. This is Case Number 21YAM001CV. And I  
10 know we've got a lot of people on the line. I'm going to  
11 do roll call, and then we'll get started.

12 Who do I have representing plaintiffs on the  
13 phone? Is that you, Mr. Thenell?

14 MR. LENON: No, Your Honor. My name is Emmerson  
15 Lenon. I am appearing today instead of Mr. Thenell.

16 THE COURT: Got it. Thank you. All right.

17 And then do I have anyone appearing on behalf of  
18 defendant Barnett?

19 MR. DAVIDSON: Yes, Your -- excuse me. Yes,  
20 Your Honor. This is Cliff Davidson, bar number 125378, on  
21 behalf of Ms. Barnett.

22 THE COURT: Great. And do I have anyone  
23 representing Ms. Brookfield?

24 MS. SIMON: Good morning, Your Honor. This is  
25 Kelly Simon, bar number 154213, on behalf of all

1 could do the general issues and then go individual. I'm  
2 going to defer to you on how you would find it easier to  
3 address these issues.

4 MR. LENON: Thank you, Your Honor.

5 I had anticipated that as the motions were filed  
6 by defendants, that they would go first --

7 THE COURT: Oh, right. No, no, no.

8 MR. LENON: -- then I would go.

9 THE COURT: Right. I misspoke when I said that.

10 They would go first, then you would respond, and  
11 then they would have a chance to respond.

12 I guess my question was do we want to argue  
13 these individually, or would you be okay with hearing from  
14 the five, six attorneys we have on the line, responding to  
15 all of them?

16 MR. LENON: I think logically what makes the  
17 most sense, and it sounds like Mr. Davidson is prepared to  
18 argue the first prong of the anti-SLAPP analysis for all  
19 the defendants, and I think that is going to be largely  
20 the same argument for everybody.

21 So what make sense to me, I think, conceptually  
22 is for Mr. Davidson to argue prong one, give me a chance  
23 to respond to prong one.

24 And then if we get to prong two, the individual  
25 claims can be argued one by one. That would be easier for

1 me. That way I don't have to respond to four or five  
2 people at once, but it might not be as efficient.

3 THE COURT: Mr. Davidson, are you comfortable  
4 with that process?

5 MR. DAVIDSON: I am, Your Honor, with one caveat  
6 that because there are some evidentiary components to the  
7 prong one analysis, there may be evidentiary points that  
8 other counsel want to raise on behalf of their clients as  
9 to prong one. So it may make sense if sort of I give my  
10 presentation, we see if anyone else wants to add points  
11 with respect to their clients as to whether the statute  
12 applies, and then perhaps then opposing counsel would  
13 respond.

14 THE COURT: Okay.

15 MR. DAVIDSON: At least with respect to the  
16 prong one aspect of this.

17 THE COURT: Okay. I think that may make sense.

18 I will tell the attorneys that given how  
19 important and, frankly, complicated legally some of these  
20 issues are, I don't anticipate giving you a decision today  
21 on prong one. So I do anticipate taking that under  
22 advisement. And so we have to get to the prong two  
23 analysis today as well, just because I won't necessarily  
24 know where I'm going.

25 Okay. So then with all of that, Mr. Davidson,

1 let's start with you.

2 MR. DAVIDSON: Yes, Your Honor. And to make  
3 sure I don't retread old ground, has the Court had an  
4 opportunity to review all the papers in this matter?

5 THE COURT: I have. I took a few hours. I read  
6 all of the pleadings. I read all of the motions. And I  
7 was actually able to get through all of the declarations  
8 and exhibits as well.

9 MR. DAVIDSON: All right. Thank you,  
10 Your Honor. Then I will make the shorter version of this.

11 There's a few points that I just wanted to  
12 highlight from the briefing, rather than go through  
13 everything we've already said in the briefs.

14 The first is this point that the plaintiffs  
15 raised where they say that the anti-SLAPP statute is  
16 incompatible with HB 3047, and that isn't the case. I  
17 think that might represent a disconnect between the  
18 plaintiffs and defendants on what exactly the anti-SLAPP  
19 statute is and what it does.

20 The anti-SLAPP statute is simply a procedure.  
21 And, in fact, ORS 31.155(2) says ORS 31.150 and .152,  
22 which are the anti-SLAPP statute, create a procedure for  
23 seeking dismissal of claims described in ORS 31.150(2) and  
24 do not affect the substantive law governing those claims.

25 All the procedure does is create a mechanism by

1 which to dismiss claims early in the litigation, before  
2 the defendants face significant expense and burden in  
3 responding to and litigating a claim based on speech  
4 conduct.

5           It's almost the equivalent of saying that, you  
6 know, ORCP 21(a) is incompatible with HB 3047, because it  
7 allows the defendant to dismiss a claim. It's simply a  
8 procedural mechanism.

9           And by the way, it's not a case that every  
10 alleged instance of doxing is going to occur in the  
11 context of a public debate.

12           I mean, as the Court may know, people find  
13 creative ways in private disputes of furthering their  
14 interests, and it's not the case that every time alleged  
15 doxing occurs, it's going to be the context of a public  
16 issue.

17           We're talking about a public issue in this case,  
18 however, which means that this particular procedure  
19 applies. And there's actually an example --

20           THE COURT: But, Mr. Davidson, if I'm  
21 understanding the brief -- and I don't know if maybe this  
22 part -- this question would be better asked at a different  
23 point with a different prong, but it does seem that, from  
24 the briefing, the defendants are taking the position that  
25 because plaintiffs put themselves, according to

1 defendants, in the public eye, that means that all of this  
2 is a public issue.

3           It doesn't seem like, from defendants'  
4 perspective, there needs to be a ton of nexus made between  
5 the alleged doxing that occurred and the particulars of  
6 the speech.

7           Did I misinterpret that?

8           MR. DAVIDSON: It -- slightly.

9           So there are two bases in which we're saying  
10 that the alleged statements are covered by the anti-SLAPP  
11 statute.

12           The first is the public forum issue, which I  
13 haven't addressed yet.

14           THE COURT: All right.

15           MR. DAVIDSON: The second is that the statements  
16 are conduct in furtherance of speech on a public issue or  
17 an issue of public interest.

18           And the conduct at issue, -- first of all,  
19 doesn't even have to be speech. It could be, you know, if  
20 I went to a supermarket to leaflet and for some reason the  
21 store decided to sue me for loitering or trespass or  
22 something like that, my conduct of going to the store is  
23 not speech, but it's something in furtherance of that  
24 speech.

25           And I can give you an example from an actual



1 anti-SLAPP case in California called Lieberman versus KCOP  
2 Television, and the cite on that is 110 Cal. App. 4th 156.  
3 There, the issue was whether a plaintiff -- to the  
4 plaintiff sued based on the surreptitious recording of an  
5 in-person conversation, which is illegal in California,  
6 just as it's unlawful here.

7           And the television channel, whose reporters had  
8 recorded the conversation then broadcast it. And the  
9 plaintiff sued, saying, I was harmed by the recording and  
10 broadcasting.

11           And the Court of Appeal in California said,  
12 well, it may be that there's a prohibition on recording  
13 things in person, but that was conduct, it's not even  
14 speech, it's just conduct in furtherance of news  
15 gathering. And because news gathering is protected, the  
16 whole thing is protected as well, even though the first  
17 thing isn't even speech itself.

18           So in this situation, it's not necessarily what  
19 the plaintiffs have done to put themselves out there  
20 so -- although, that's important to our argument -- so  
21 much as it is the fact that there is a public issue and  
22 robust public debate going on in the community. And the  
23 alleged statements by the defendants in this case were  
24 part of that and they were in furtherance of that.

25           THE COURT: Well, I -- let me ask my question a

1 different way, and I may be getting caught up on the  
2 details, and if so, I apologize.

3           But is what you're saying -- is what the  
4 defendants are saying is that if someone puts themselves  
5 in the public eye, if a police officer, if a public  
6 official, if just a normal teacher or someone else puts  
7 themselves in the public eye, that once they're in the  
8 public eye, that gives people around the, whether it's a  
9 spouse, an ex, you know, a disgruntled person in their  
10 life, does that give that person *carte blanche* to go in  
11 and engage in behavior that would -- might otherwise be  
12 considered doxing, because that -- once that person is in  
13 the public eye? Or do defendants agree that there needs  
14 to be some nexus between those two things?

15           MR. DAVIDSON: There is a nexus in this case,  
16 Your Honor. I could address the broader issue in a  
17 moment, but there actually is that nexus in this case, as  
18 the defendants note in the omnibus reply on page 6 --  
19 excuse me -- pages 5 and 6.

20           Because in running for office, the plaintiffs  
21 here -- review of the information that's simply being  
22 repeated by the defendants in this case.

23           Many of them ran based on their professions,  
24 raised their professions and their specific jobs and  
25 positions as part of their campaigns.

1           And by commenting on those things, the  
2 defendants have engaged in speech directly related to the  
3 issues that plaintiffs themselves have raised and put out  
4 there as part of their candidacy and as part of their  
5 roles as school board directors.

6           Now, as far as the Court's larger question,  
7 which I don't think the Court necessarily needs to reach,  
8 but the larger question about can parties discuss  
9 information about public officials because they've put  
10 themselves out there, there are cases suggesting that that  
11 is, in fact, protected conduct. Those are cited on page 6  
12 of the reply, and those are federal cases.

13           The legislature has drawn a line when it comes  
14 to engaging in criminal conduct involving the sharing of  
15 that sort of information, which is an acknowledgement, in  
16 a sense, and you can see the legislative history that Ms.  
17 Barnett's motion raised. It's an acknowledgement in the  
18 sense that this sort of discussion is appropriate, it just  
19 can't cross the line into criminal conduct.

20           So that's my response to the Court's larger  
21 question about sort of what's the line here, if there is  
22 one.

23           THE COURT: So your position is that the statute  
24 the plaintiffs have sued under only applies when the  
25 behavior would otherwise already be criminal?

1 MR. DAVIDSON: Well, it has to rise to a level  
2 of criminality. It, essentially, has to satisfy the  
3 elements of stalking -- I mean, it has to satisfy the  
4 elements of criminal harassment.

5 THE COURT: If that is the case, if the behavior  
6 already has to give rise to the level of that behavior,  
7 why would this additional statute be necessary?

8 What gap was this additional statute trying to  
9 fill, the doxing statute?

10 MR. DAVIDSON: Well, for one thing, Your Honor,  
11 it gives rise to the civil claim, which would not  
12 necessarily be true, and further --

13 THE COURT: There is civil stalking protective  
14 orders.

15 MR. DAVIDSON: That may be true, right, but you  
16 don't necessarily get declaratory relief from that or  
17 injunctive relief or damages.

18 THE COURT: Okay.

19 MR. DAVIDSON: So it -- right.

20 And I mean, to put it in context, Your Honor, it  
21 was part of the package of bills last summer where at the  
22 same time the legislature also enacted a bill saying that  
23 police officers cannot cover their badges. So it was sort  
24 of an, all right, you have to show your badge number, but  
25 at the same time, we're going to allow you to sue if you

1 are doxed.

2           And it's not just police officers who were  
3 considered as part of this bill. Protestors were actually  
4 considered as part of the bill too, and there's testimony  
5 on that point.

6           We reviewed the legislative history in a bit of  
7 detail in Ms. Barnett's motion.

8           THE COURT: I saw that. Thank you.

9           MR. DAVIDSON: Have I answered the Court  
10 questions on this point, because --

11          THE COURT: Oh, yes.

12          MR. DAVIDSON: -- if so, I'll move on.

13          THE COURT: Definitely move on. Thank you.

14          MR. DAVIDSON: Okay. Second, and I touched on  
15 this already, the statute doesn't just protect speech on a  
16 public issue. It protects conduct.

17                 And, you know, so basically, as I said, if  
18 there's conduct that is in furtherance of a public issue,  
19 of speech on a public issue and speech on an issue of  
20 public interest, then that conduct itself is covered under  
21 the anti-SLAPP statute.

22                 I've talked about a California case on that  
23 point. We discuss in detail though an Oregon case in both  
24 the motion and the omnibus reply called Mullen versus  
25 Meredith, where the Court of Appeals reversed the denial

1 of anti-SLAPP motion because the trial court had looked  
2 too narrowly at the conduct involved.

3           So what this involved was a news report on a  
4 shooting in a neighborhood, and corrections officer who  
5 lived in the neighborhood had agreed to speak with the  
6 reporter on the condition that they would not show video  
7 of him, because he feared for his safety.

8           Well, the broadcast included that video, and he  
9 sued. And the trial court had focused on the fact that  
10 that specific coverage, that three-second or so video, was  
11 shown, but didn't need to be shown in order to report on  
12 the larger story. And so the Court said the anti-SLAPP  
13 doesn't apply.

14           The Court of Appeals reversed. They said, no,  
15 no, it's not narrowing down onto the conduct that the  
16 plaintiffs allege is lawful. It's looking at the totality  
17 of what's going on and what kind of claim is this really -  
18 - you know, what kind of claim is this.

19           And they said, you know, showing the footage was  
20 conduct in furtherance of the larger story, which is  
21 protected.

22           So here, to the extent that the plaintiffs are  
23 arguing that the anti-SLAPP statute doesn't apply because  
24 this wasn't speech on a public issue, if they're looking  
25 specifically at the statements here, that's too narrow.

1 The Court needs to look at the larger context and the  
2 furtherance of that larger issue that those specific  
3 statements were part of.

4 But in any event, as we have pointed out,  
5 discussing employment and contact information is actually  
6 protected in the -- under the First Amendment.

7 We cite, in the omnibus reply, an Eastern  
8 District of California case on that and a Northern  
9 District of Florida case.

10 I'd also like to turn to the issue of whether  
11 NEED (ph), the Facebook group, is a public forum for  
12 purposes of (2) (c).

13 THE COURT: Before we get there, counsel, I did  
14 have a question, as I was reading through the briefing.  
15 I'm trying to think how to best phrase it.

16 We've -- you've cited -- everyone has cited a  
17 lot of California cases, but it occurred to me as I was  
18 going through these, that there may be comparable torts in  
19 Oregon that -- where the issue of speech has been  
20 considered. For example, interference with business  
21 relations or intentional infliction of emotional distress.

22 Are there any Oregon-specific cases that have  
23 looked at whether or not speech in those contexts is  
24 protected, that would help the Court in this case?

25 MR. DAVIDSON: There are cases involving those

1 types of torts. I could not cite to off the top of my  
2 head what they are, but I know that, frankly, I've briefed  
3 them before. So I could provide them to the Court. I  
4 just don't know them sitting here today.

5           The idea is that the statute applies very  
6 broadly to any claim that arises from the types -- the  
7 categories of speech and conduct in subpart (2). And that  
8 can be in some cases a breach of contract, if it's related  
9 to litigation conduct. It can be abuse of process claims.  
10 It can be business torts, so long as it meets the  
11 criteria, Your Honor.

12           And the key test is like what does it actually  
13 arise from. It's not enough that there's speech adjacent  
14 to the tort. It actually has to arise from the speech or  
15 speech-related conduct.

16           THE COURT: So I --

17           MR. DAVIDSON: It can be any claim.

18           THE COURT: I don't know that I'm understanding  
19 the answer.

20           Do you know offhand whether or not those cases  
21 apply an analysis of what is and is not protected speech  
22 that would be analogous or, frankly, the same as the kind  
23 of analysis I'm being asked to do on prong one here?

24           MR. DAVIDSON: I do not have citations to such  
25 cases, but I think that --



1           THE COURT: But do you know what they say? Do  
2 you know offhand what the outcome of those cases is or  
3 what the theme is? Because it seems to me that those  
4 cases may be more persuasive authority than the California  
5 cases that are, yes, looking at a similar type of doxing  
6 statute, but applying -- you know, Oregon has very strict  
7 and very different -- not very different, but they -- we  
8 do have, you know, our independent view on what  
9 constitutes free speech.

10           So it seems like if there are cases that talk  
11 about what it means to have free speech in the context of  
12 those other torts, those would be useful to me.

13           MR. DAVIDSON: I agree the Court is absolutely  
14 correct in that Oregon has a more robust tradition of free  
15 speech under Article I, Section 8, even than the First  
16 Amendment or some other states.

17           There are certainly cases discussing in general  
18 what speech rights may be.

19           As far as anti-SLAPP cases, I mean, I checked  
20 this yesterday, there are 129 reported cases, even though  
21 the statute has been around since 2001.

22           So it's there's a lot more that's been decided  
23 in California. I can't, sitting here today, think of a  
24 case involving a statute that is similar to this one. I  
25 am happy to look, but I'm not -- I'm not aware of one

1 based on a statute like this.

2 THE COURT: Well, but --

3 MR. DAVIDSON: That's not say, though -- I'm  
4 sorry, Your Honor.

5 THE COURT: But when we're talking about -- and  
6 I understand that the SLAPP statute is -- you know, it has  
7 its own criteria.

8 But the first prong has to do with whether or  
9 not there's protected speech. Protected speech is  
10 protected speech is protected speech, regardless of  
11 whether or not we're evaluating whether it's protected  
12 speech in the context of a SLAPP motion or we're  
13 evaluating whether it's protected speech in the context of  
14 a summary judgment or some other kinds of motions. Am I  
15 wrong about that?

16 MR. DAVIDSON: Slightly, Your Honor.

17 THE COURT: Okay.

18 MR. DAVIDSON: So the prong D -- I'm sorry. I  
19 don't know if the Court had a further question.

20 THE COURT: Oh, no, no, no. I was appreciating  
21 you correcting me, because those are the kinds of  
22 questions that will help me figure out the answer to this.  
23 So go ahead.

24 MR. DAVIDSON: Great. So under prong one, the  
25 Court does not have to determine whether the speech is

1 protected by the First Amendment, especially when we're  
2 talking about prong D, because the claim only has to arise  
3 from conduct in furtherance of speech on a public issue.

4 Here, the speech on a public issue is the debate  
5 about the policies of the school board.

6 The conduct is the alleged doxing, although  
7 obviously we disagree that it was doxing.

8 I know you asked me to turn to Oregon cases.  
9 Actually, I can cite one. Mullen versus Meredith actually  
10 discusses the issue of, you know, how the Court determines  
11 whether something arises from speech that falls -- speech  
12 or conduct that falls under the statute. And it does not  
13 involve a determination at the prong one stage of whether  
14 the speech itself is constitutional. That's actually a  
15 prong two inquiry.

16 THE COURT: Okay.

17 MR. DAVIDSON: To say, okay, now that the  
18 statute applies, we see whether there are First Amendment  
19 protections that might apply. And if they do apply, has  
20 the plaintiff overcome them?

21 But when we're talking about prong one, the  
22 inquiry is like what kind of conduct are we talking about  
23 here.

24 If I may read you something briefly from the  
25 California case I raised, even though you told me you

1 wanted Oregon cases, I think this would actually help,  
2 because it cites to cases prior to Oregon's enactment, and  
3 those cases are controlling.

4 THE COURT: Okay.

5 MR. DAVIDSON: This from that Lieberman versus  
6 KCOP Television case from 2003, and this is at page 165.  
7 It says -- remember, this is about the surreptitious  
8 recording. "To say that lawful news gathering is an act  
9 in furtherance of one's right to free speech, but unlawful  
10 news gathering is not an act in furtherance of one's right  
11 to free speech, begs the question. It is not the  
12 defendant's burden in bringing a SLAPP motion to establish  
13 that the challenged cause of action is constitutionally  
14 protected as a matter of law."

15 And then it goes on to say, "Because the  
16 surreptitious recordings here were in aid of and were  
17 incorporated into a broadcast in connection of a public  
18 issue" -- I think they meant with a public issue -- "we  
19 conclude that Lieberman's complaint fell within the scope  
20 of the anti-SLAPP statute."

21 So that provides an idea of what the Court does  
22 in prong one.

23 You look at what kind of conduct that is, what  
24 kind of conduct is involved, and does it fall under  
25 subpart (2)? If it does, then the Court considers whether

1 plaintiffs can meet their burden, and part of that is  
2 determining whether it falls under that First Amendment  
3 protection.

4 THE COURT: Okay. I have another question, but  
5 I'll reserve it for when we get to prong two. So go  
6 ahead.

7 MR. DAVIDSON: Okay. Thank you.

8 With respect to the public forum issue for  
9 (2)(c), the Wolsey declaration that the Court has reviewed  
10 sets forth the factual basis for this argument that it is  
11 a public forum, and then there are very minimal things  
12 that someone has to do in order to join the group.

13 That it is a visible, private group. People can  
14 see that it exists. If they want to join it, they can  
15 ask. And they have to answer a question basically why  
16 they want to join this group, here's what we believe in  
17 and here are our rules as a group.

18 We cited cases from California, albeit an  
19 unpublished case from California, holding that a private  
20 Facebook group is a public forum for purposes of the  
21 anti-SLAPP statute.

22 THE COURT: Counsel, I'm going to pause you  
23 there. Every state is a little bit different. I know, I  
24 think, the State of Washington says you're not even  
25 allowed to refer to unpublished decisions. I don't know

1 if I'm remembering that right or not.

2 Are there any limitations in California to the  
3 use of unpublished decisions?

4 MR. DAVIDSON: You cannot cite them in  
5 California courts. That's true.

6 THE COURT: Okay. And so how do we -- if the  
7 State of California is unwilling to consider cases decided  
8 by the State of California, why should Oregon care about  
9 an unpublished decision decided by another state?

10 MR. DAVIDSON: Only to be helpful, because there  
11 are no cases that we located that are about private groups  
12 on Facebook.

13 THE COURT: Okay.

14 MR. DAVIDSON: Specifically, just to show that  
15 it's out there.

16 THE COURT: Okay.

17 MR. DAVIDSON: But you're correct. They're  
18 certainly not authoritative. And because it's after the  
19 enactment of the anti-SLAPP statute, it's persuasive  
20 anyway. So the Court can determine its persuasive value.

21 But if we were in California court, I would not  
22 be able to cite it.

23 THE COURT: Okay.

24 MR. DAVIDSON: And in preparing for this  
25 argument, I don't know if the Court is familiar with

1 Nextdoor.com. It's sort of --

2 THE COURT: Yes.

3 MR. DAVIDSON: Okay. So I realized there was an  
4 analogy to Nextdoor, which is, you know, if I want to join  
5 Nextdoor, I have to show that I live in the neighborhood.  
6 So I have to put in my address, give some contact  
7 information. I'm screened through some process, and then  
8 I'm admitted if I meet the criteria. There are rules of  
9 conduct. I can be kicked out if I am abusive or otherwise  
10 violate the terms.

11 But that's no less a public forum than this  
12 visible private group that -- you know, that NEED has.  
13 These are certain de minimis requirements to join.

14 I can cite to another unpublished California  
15 opinion about Nextdoor.com, holding that it, in fact, is a  
16 public forum, despite the fact that the Court noted that  
17 Nextdoor describe itself as a "private social network."

18 THE COURT: Do we not have any Oregon cases that  
19 talk about what is and is not a public forum? I feel like  
20 you're limiting your cases to those that are deciding  
21 public forum in the context of SLAPP, but is that kind of  
22 limitation necessary?

23 Can we look, because I'm -- there has to be  
24 cases in Oregon that talk about what is and is not a  
25 public forum.

1           Is the issue that there haven't been Oregon  
2 cases about what is and is not a public forum in the  
3 context of SLAPP, or is the issue that because some of  
4 these forums are new, there just aren't any Oregon cases  
5 on that kind of issue?

6           MR. DAVIDSON: Right. So there are some cases  
7 about what is a public forum for SLAPP purposes in Oregon,  
8 and those have included the -- I always mispronounce it's,  
9 but I think Neuman v. Liles --

10          THE COURT: Okay.

11          MR. DAVIDSON: -- talks about how the Internet,  
12 as a general matter and product reviews specifically, or  
13 at least private review -- product review websites are  
14 public forums.

15           There are larger -- there are cases more  
16 generally about what a public forum is. I mean, it's a  
17 place open to the public where people can say things,  
18 essentially, and it's very broad in Oregon under Article  
19 I, Section 8.

20           But in the SLAPP context, there hasn't been much  
21 in Oregon about what the public forum requirement is. And  
22 definitely not in the Internet context, other than to say  
23 generally postings on the Internet are in connection with  
24 the public forum -- or excuse me -- are made in a public  
25 forum.



1           THE COURT: Let me ask the question slightly  
2 differently.

3           Is the same definition of public forum -- it  
4 is -- is a public forum is a public forum under SLAPP will  
5 a public forum also be a public forum for constitutional  
6 analysis purposes and vice versa? Or are the terms  
7 defined differently in those two contexts?

8           MR. DAVIDSON: I'm not aware of a difference,  
9 Your Honor.

10          THE COURT: Okay. So then why do I want to  
11 limit myself to looking at cases that talk about what a  
12 public forum is in the SLAPP context, when there's other  
13 cases out there that talk about what a public forum is  
14 generally?

15          MR. DAVIDSON: I don't think you need to, Your  
16 Honor. I think we were trying to tailor the argument to,  
17 you know, a Facebook group of this nature.

18          THE COURT: Okay.

19          MR. DAVIDSON: But I don't know that there's a  
20 reason --

21          THE COURT: Are there --

22          MR. DAVIDSON: -- that you need to limit --

23          THE COURT: Are there any cases that talk about  
24 whether it's a public forum if it's not a technology  
25 forum, like a private group, but a private club? There

1 are lots of clubs out there that may restrict it to  
2 members, but are there any cases that say those private  
3 clubs are nevertheless public forums?

4 MR. DAVIDSON: I am not aware. If other counsel  
5 are aware of such cases, I would defer to them. But I'm  
6 certain it's come up. I don't have that on the tip of my  
7 tongue though.

8 THE COURT: Because isn't that really -- and I'm  
9 going to let Mr. Lenon speak for himself, but isn't that  
10 part of his point that -- or -- and I should say  
11 plaintiffs, but that what makes this not a public forum is  
12 the fact that it was a private group?

13 So if we take it outside of the technology  
14 perspective, it seems like it might be useful to know if a  
15 public forum has been being the public forum in that for  
16 private groups.

17 MR. DAVIDSON: Well, there are -- for example,  
18 there are limited public forums. So, for example, in  
19 order to --

20 THE COURT: Like the Fred Meyer case.

21 MR. DAVIDSON: Right. So in order to -- if in  
22 order to go to a town hall, I have to be a University of  
23 Oregon student, right. Let's say that it's something  
24 hosted at U of O, and the only criterion is I have to be a  
25 university student. You know, there's some limitation,

1 because I have to be enrolled. But that doesn't make any  
2 less of a public forum.

3 THE COURT: Okay. I --

4 MR. DAVIDSON: But, then --

5 THE COURT: I keep interrupting you, counsel. I  
6 apologize.

7 Go ahead.

8 MR. DAVIDSON: No, no, no. Go ahead.

9 THE COURT: No, no, no. I was apologizing for  
10 peppering you with constant questions. If you want to go  
11 back to your primary argument, go ahead.

12 MR. DAVIDSON: Certainly. Although, obviously,  
13 you know, if the Court has questions, I'm here to try to  
14 be helpful, as I always --

15 THE COURT: And I certainly won't hold back from  
16 asking them, but --

17 MR. DAVIDSON: That's -- those are the points  
18 that I had --

19 THE COURT: Oh, okay.

20 MR. DAVIDSON: -- about sort of --

21 THE COURT: The prong one?

22 MR. DAVIDSON: -- prong one in general.

23 THE COURT: Okay.

24 MR. DAVIDSON: If I may talk about a prominent  
25 point that I guess Ms. Barnett would make separately, and

1 that's the issue of who exactly is suing here, you know,  
2 as counsel forthrightly acknowledged, the complaint  
3 actually has all of the plaintiffs suing Ms. Barnett.

4           And as we know in the case that we cite, which  
5 again is a California case, the Court has to take the  
6 complaint as it is and how it was filed. The plaintiff  
7 can't amend according to proof through sort of subsequent  
8 statements.

9           I mean, so at the moment, four plaintiffs,  
10 although Ms. -- Director Powell has filed a notice of  
11 dismissal. So I suppose three plaintiffs are suing  
12 Ms. Barnett still.

13           We're not asking the Court to hold that Ms.  
14 Barnett will remain in the case, if the Court gives leave  
15 to file the amended complaint, because she's not named in  
16 the amended complaint at all.

17           What we're saying, though, is for purposes of  
18 determining whether plaintiffs have shown what they need  
19 to show as to Ms. -- shown what they need to show as to  
20 Ms. Barnett, they just -- they haven't, and all four of  
21 them needed to actually show their *prima facie* case.

22           I have the other points for Ms. Barnett about  
23 the attorney fees, which I've mentioned before and why the  
24 Court should determine entitlements to those fees by  
25 hearing the motion, but I can reserve that for later, if

1 there's a better time that the Court prefers.

2 THE COURT: Okay. Let me just ask a quick  
3 clarifying question as to Ms. Barnett.

4 Once today's hearing is over and you've made  
5 your record, I'm assuming at that point there would be no  
6 reason to keep her in the case and you would agree that I  
7 should sign the judgment of dismissal as to her.

8 MR. DAVIDSON: I agree you should sign the  
9 judgment of dismissal as to her. I'd also agree that once  
10 the amended complaint is filed, she will no longer be in  
11 the case. I think the sticking point is if the Court  
12 awards fees, who is it against? Is it just against Ms.  
13 Powell, or is it against all four plaintiffs?

14 THE COURT: Okay.

15 MR. DAVIDSON: That's the question we really  
16 want determined.

17 THE COURT: Okay. Anything else you wanted to  
18 say as to prong one?

19 MR. DAVIDSON: No. Thank you, Your Honor.

20 THE COURT: Does -- or do we have any of the  
21 attorneys representing Ms. Tofte that want to make  
22 specific arguments as to her as to point one -- prong one?

23 MS. PAYNE: Just very briefly, Your Honor. This  
24 is Shenoa Payne.

25 The -- I just want to address really quickly

1 your question as to the nexus between the alleged doxing  
2 and First Amendment protected speech.

3 As Mr. Davidson pointed out, the real question  
4 in prong one is whether there was conduct in furtherance  
5 of protected speech, and, you know, you look at the  
6 broader picture.

7 Ms. Tofte, here, made statements in NEED, posted  
8 a link to Director Dehart's employment website. And  
9 similar to defendant Schwanz and defendant Brookfield,  
10 that information was already in the public realm.

11 And as we cited in our joint reply, the United  
12 States Supreme Court in the First Star case has  
13 specifically said that when -- the republishing of  
14 publicly available information that is in the public realm  
15 and that is true, if it is related to a public interest,  
16 is protected speech. So here, that sort of conduct itself  
17 has a direct nexus to First Amendment protected speech.

18 So I just wanted to address your question as  
19 to --

20 THE COURT: So let me follow up on that.

21 MS. PAYNE: -- that nexus.

22 THE COURT: Let me follow up on that point.

23 In this Internet age, almost all information --  
24 it's hard to think of what kind of information would not  
25 be available if -- under a Google search or some sort of

1 word search in this day of the Internet. Is it your  
2 position that if someone can sit down and Google it and  
3 find the answer, that that means it's publicly available  
4 information?

5 MS. PAYNE: Well, I think the difference here is  
6 that the directors themselves put the facts that they work  
7 at these employer's locations in the public sphere of  
8 themselves, whether it was on their LinkedIn pages or as  
9 part of their campaign websites or as part of their run  
10 for public office. So the fact that they work at these  
11 employers led to the publicly available information. They  
12 disclosed this information themselves, which then led --

13 THE COURT: But --

14 MS. PAYNE: Go on.

15 THE COURT: Let's take it outside the employment  
16 context. It is routine and common, frankly, for public  
17 officials to say, I'm a parent, I have children. Does  
18 that fact that a candidate says, I'm a parent, I have  
19 children, mean that they have no ability to protect their  
20 children's names and identities and contact information  
21 from being shared if you can Google children of elected  
22 official and get that information?

23 MS. PAYNE: Well, I think, as we pointed out in  
24 our brief, I think public officials may have certain  
25 protected information like, you know, the names of their

1 children or where their children go to school or that sort  
2 of information, because that is generally not publicly  
3 available information.

4 THE COURT: If you Google -- if you hit Google  
5 and you can get the names of -- I mean, there's all sorts  
6 of websites, right, that say these are the people who are  
7 connected. It's conceivably possible that you could very  
8 easily identify the children of an elected official.

9 So what would make that -- in my hypothetical  
10 example, the elected official put it out there in the  
11 campaign that they were a parent. They put it out there  
12 in the campaign that they had children. The information  
13 through some savvy Google searching is available. What  
14 would distinguish that from the situation we have here  
15 with the employment?

16 MS. PAYNE: I think what we're looking at when  
17 we're talking about prong one --

18 THE COURT: Mm-hmm.

19 MS. PAYNE: -- is what the -- what is in the  
20 public interest. And the public does not necessarily have  
21 an interest in knowing the names of public official's  
22 children or where they go to school. That is certainly  
23 private information and is not necessary to the public  
24 discourse of a public official.

25 And under First Star the United States Supreme



1 Court has said specifically that the public has a public  
2 interest First Amendment right to know employment  
3 information and contact information for public officials.  
4 And if that is publicly available information and  
5 truthful, there is a First Amendment right to discuss that  
6 information for public officials.

7           So I think when you're talking about, you know,  
8 children or, you know, where children go to school, the  
9 Supreme Court has not said that that is in the public  
10 interest or that individuals have a right to know that  
11 information. So I think that's just a -- you know,  
12 different information and now something that the Supreme  
13 Court has said is a First Amendment right to discuss.

14           THE COURT: Is that because the Supreme Court  
15 has said that employment and children are different, or is  
16 it because the Supreme Court hasn't addressed the issue of  
17 children yet?

18           MS. PAYNE: I'm not aware that the Supreme Court  
19 has addressed the issue of children.

20           THE COURT: Okay.

21           MS. PAYNE: I do know that they have addressed  
22 the public significance of, you know, discussing addresses  
23 and telephone numbers of legislators, and that is, you  
24 know, public discourse to discuss that information.

25           THE COURT: Okay. Got it. Anything else you

1 wanted to say as to your client?

2 MS. PAYNE: No.

3 THE COURT: Okay.

4 MS. PAYNE: No. That's it.

5 THE COURT: The attorney for AJ Schwanz, was  
6 there anything that you wanted to say specific to your  
7 client as to prong one?

8 MX. PECK: Yes, Your Honor. This is Rian Peck.  
9 And at the outset, I apologize, because there is work  
10 going on in the background, and I hope that the Court can  
11 hear me, but it's safer appearing from the bathroom. This  
12 was the best option. I'm trying to insulate as much as  
13 possible.

14 But -- so to address the nexus regarding Ms.  
15 Schwanz specifically, aside from the arguments that my  
16 co-counsel have already made about the nexus with respect  
17 to the post and how it is, in fact, related to here, Chair  
18 Brown's comments and his participation in the school  
19 board, there is another thing that makes Mr. Brown  
20 different, and that's the fact that he is a high school  
21 tennis coach.

22 And so even if the Court were to find, which,  
23 you know, we don't believe it should, that there was no  
24 nexus with respect to, you know, the school board  
25 activity, there is still a nexus here with respect to the

1 fact that Mr. Brown works with children every single day.

2 And on pages 14 to 15 of Ms. Schwanz's  
3 anti-SLAPP motion and in her declaration, she confirms to  
4 the Court that she made this post primarily out of a  
5 concern for student safety and student well-being.

6 And, so, that is just one fact I wanted to  
7 highlight and that I did not see addressed by the  
8 plaintiffs in their brief.

9 THE COURT: Okay. Thank you.

10 The attorney for Ms. Brookfield, was there any  
11 specific argument you wanted to make as to Ms. Brookfield  
12 as to prong one of the analysis?

13 MR. ACHARYA: Thank you, Your Honor. And, yes.  
14 First I should enter my appearance, since I had some  
15 technical difficulties at the beginning of the hearing.  
16 This is Athul Acharya for all defendants.

17 I had two points I wanted to make. One, sort of  
18 generally to a question that Your Honor asked, whether  
19 being in the public eye means that any and all speech from  
20 any person on any issue is constitutionally protected. I  
21 think you asked whether that was defendants' position.

22 And to be precise, defendants' position on prong  
23 one is that being in the public eye means that almost all  
24 speech from any person about you will -- if you sue  
25 someone as to that speech, then on an anti-SLAPP motion,

1 they'll get to prong two.

2           And anti-SLAPP prong one is not about the merits  
3 of protected speech. It just says that if the speech is  
4 on a matter of public interest, then the defendants get an  
5 early look at the merits.

6           But whether that speech is constitutionally  
7 protected and therefore whether the defendant has a  
8 defense to the action is a merits question that, at prong  
9 two, the plaintiff has to make a showing that the  
10 defendant still has to win on.

11           As to --

12           THE COURT: Does it matter, counsel, if the  
13 person is in the public eye voluntarily or involuntarily?  
14 Certainly, we can think of examples of people who are in  
15 the news through no fault of their own. Would that same  
16 analysis apply, that same position apply?

17           MR. ACHARYA: Frankly, Your Honor, probably.  
18 Probably, yes, the same analysis would apply.

19           But, again, that's -- I'm only talking as to  
20 prong one here.

21           THE COURT: Mm-hmm.

22           MR. ACHARYA: As to prong two, the merits of the  
23 constitutional defense, there might be different outcomes.

24           But as to prong one, if you sue someone and  
25 you're in the public eye and you sue them for talking

1 about, then you -- the defendant gets to go to prong two  
2 and get an early look at the merits.

3 Now, the merits outcome is a separate question,  
4 if that answers Your Honor's question about that.

5 THE COURT: It does. Thank you. Okay.

6 Anything else you wanted to say on that?

7 MR. ACHARYA: Yeah. And then -- not on that,  
8 but on the second point, the nexus point for  
9 Ms. Brookfield. Ms. Brookfield posted about Brian  
10 Shannon's employer.

11 Now, Brian Shannon posted his campaign -- posted  
12 on his campaign website that he worked at Selectron. He  
13 spoke on his campaign website about how public spirited  
14 his work at Selectron was. And this campaign worked. He  
15 got elected.

16 So as to Ms. Brookfield's post about Brian  
17 Shannon, the nexus is very tight. She was talking about  
18 something that he himself talked about to get elected to  
19 public office.

20 THE COURT: All right. Thank you.

21 I think I heard from all of the defense  
22 attorneys. Were there any defense attorneys that I missed  
23 that wanted to say something as to prong one?

24 Okay. Mr. Lenon, you are up.

25 MR. LENON: Okay. Thank you, Your Honor. I'm

1 going to do my best here to cover everything that the  
2 defendants have argued so far.

3           The position of the plaintiffs, as is pretty  
4 well briefed in the written materials, is that the  
5 anti-SLAPP statute itself doesn't apply to these  
6 particular posts.

7           The defendants have cited two categories under  
8 anti-SLAPP. The category C, which is statements made in a  
9 public forum or to a place open to the public on a matter  
10 of public interest or in connection with a matter which  
11 the public is interested in. There's sort of some  
12 duplicative language in the -- in all of these statutory  
13 provisions.

14           And then the second category D, which is where  
15 they focus most of the argument today, is on the conduct  
16 in furtherance of an important right or in furtherance of  
17 the right of free speech.

18           That category D also contains the requirement,  
19 it can't just be any conduct in furtherance of the right  
20 of free speech. It's conduct in furtherance of the right  
21 of free speech in connection with a public issue or a  
22 matter of public interest.

23           And I think that second prong that's common to  
24 both is the difficulty here that they have.

25           In addition to the real significant issues, I

1 think the defendants have in proving that the Facebook  
2 group, in fact, a public forum.

3           The California case that is cited, as was  
4 conceded, is an unpublished case. It's not even able to  
5 be cited in California, and I don't think this Court  
6 should even consider it as a persuasive case.

7           And even if the Court were going to look at that  
8 case, it is one sentence in the -- that the California  
9 Court of Appeals throws out in their holding. It's not  
10 supported by any citation to other authority. It's not  
11 accompanied by any discussion or analysis. It just  
12 assumes that, of course, this Facebook group is a public  
13 place.

14           I think why that's significant is that there's a  
15 California Supreme Court case, that both the plaintiffs  
16 and defendant cited, the Barrett case, that goes directly  
17 to what guidance the California Courts of Appeals were  
18 given by their Supreme Court on what a public forum is.  
19 And it is, the hallmark of a public forum is a place  
20 accessible to the public.

21           This is echoed also in the Neuman v. Liles case  
22 that is cited in all of the briefing as well. That's the  
23 Oregon Court of Appeals case on this matter.

24           And every court that's looked at this has held,  
25 although there was some dissension and disagreements

1 earlier in the case law about whether certain websites  
2 were or not forums, is now the case that nearly uniformly  
3 the website that is accessible to the public, anybody can  
4 go there, it's not behind a pay wall, it's not behind a  
5 membership screen, those are all public forums. That is  
6 courts federal and state in Oregon and California, that's  
7 fine.

8           The issue here is that this particular Facebook  
9 group is a private group.

10           The defendants have made a big deal out of the  
11 fact that it is a visible group, and I'm going to have to  
12 confess a little bit of ignorance. I got -- I'm not on  
13 Facebook. I got a little bit of a lesson from my law  
14 clerk about the difference between these things. There  
15 are visible groups, invisible groups.

16           We'll concede -- the plaintiffs concede this is  
17 a visible group.

18           The fact of the matter is, if you go to that  
19 group's page, even with a Facebook account, you're going  
20 to see a page that says, you can't see who's in the group,  
21 you can't see what they've posted, and you have to ask for  
22 permission to enter.

23           I think there are some --

24           THE COURT: Does it make a difference at all  
25 though? I mean, because I saw in the exhibits it looks



1 like, at least the time the screenshots were taken, there  
2 were 682 members. Does there come a point at which even a  
3 private group becomes a public group by the sheer number  
4 of -- by the sheer size of that?

5 MR. LENON: I don't know the answer to that,  
6 Your Honor. I mean, there is no case law on that.

7 And as we pointed out in our briefing, I mean,  
8 there is no support in Oregon courts at all for the idea  
9 that a public -- or that a private Facebook group is a  
10 public forum.

11 There might be a threshold at which it becomes a  
12 public forum, but not under the holdings as they currently  
13 exist, because I think, again, the threshold question is  
14 can a member of the general public, without permission  
15 from somebody already inside the group, get access to the  
16 group.

17 And the difference between that and just a  
18 regular Facebook group, which, again, you know, they're --  
19 the defendants are correct that you still have to create a  
20 Facebook account to get into anything. But there's no one  
21 really gatekeeping the Facebook accounts. I mean, there's  
22 no burden there. Anybody can create a Facebook account  
23 and there -- you don't have to prove anything to get in.

24 The difference between that and a private group  
25 is that the private group has a set of group

1 administrators. They have to approve people to come into  
2 the group.

3           And so I think when Your Honor raised the  
4 question about non-online groups, private clubs, I think  
5 that that's directly on point, that this is more  
6 like -- the analogy is more like a brick and mortar  
7 private club, you know, that you got to come up and knock  
8 on the door and say the password to get in. The  
9 discussion inside that private club is for members only --

10           THE COURT: It --

11           MR. LENON: -- and it's not a place that is  
12 accessible to the public.

13           THE COURT: Are there cases in Oregon that say  
14 that? Because I asked --

15           MR. LENON: There are not.

16           THE COURT: There are not.

17           MR. LENON: I don't --

18           THE COURT: Are there cases from other states  
19 that say that?

20           MR. LENON: I don't believe so. I did a lot of  
21 research on this issue in various jurisdictions, and I  
22 have not been able to find one.

23           I will -- in full candor to the Court, I was  
24 able to find today some Oregon cases on public -- on  
25 private groups, private members-only groups, with respect

1 to the public accommodation anti-discrimination statutes.

2 And it does appear that there has been some  
3 cases that have held that even private members-only groups  
4 are subject to anti-discrimination laws under Oregon's  
5 public accommodation statutes.

6 The first case that popped up for me was called  
7 Lawman or Lahmann v. Grand Aerie of the Fraternal Order of  
8 the Eagles. This is a Court of Appeals case from 2002.  
9 The citation is 180 Or. App. 420.

10 That -- initially the trial court held the  
11 anti-discrimination statutes did not apply. The Court of  
12 Appeals overturned that, kicked it back down to the trial  
13 court level, and it was ultimately held that the  
14 anti-discrimination laws did apply. And there's a couple  
15 other cases that also find the --

16 THE COURT: Was that founded on the premise that  
17 this was a public forum or was that a different -- was the  
18 criteria just different?

19 MR. LENON: You know, I haven't had a chance to  
20 fully --

21 THE COURT: Okay.

22 MR. LENON: -- read the cases, because I just  
23 searched it today.

24 THE COURT: Okay.

25 MR. LENON: I don't believe so. Looking through

1 the headnotes and looking through the synopsis briefly, it  
2 seems to be a specific analysis of those anti-  
3 discrimination statutes.

4 THE COURT: So if that's the case, how can -- I  
5 appreciate how sure you are on behalf of your clients that  
6 it's -- that the membership requirement, the permission to  
7 enter requirement renders it not a public forum, but how  
8 can I, as a judge who's almost certainly going to be  
9 appealed by one of you, to be sure -- as sure as you are  
10 of that?

11 MR. LENON: Well, I think that is -- that's the  
12 Barrett -- let me find that exact citation for you. It is  
13 cited in our brief on -- starting on page 5, we looked  
14 at -- it's not on page 5. There's some discussion on page  
15 6, and then I think it is -- yes, Barrett v. Rosenthal,  
16 and that is 2004 California Supreme Court case, 40 Cal.  
17 4th 33.

18 And at page 41, note 4, the Court's quote is,  
19 slightly abbreviated, they state, websites accessible to  
20 the public are public forums for purposes of anti-SLAPP,  
21 noting that public access, not the right to public  
22 comment, is the hallmark.

23 That was the prior debate, is whether or not a  
24 website that a person did not have the right to comment on  
25 but could look at was still a public forum, and the Court

1 there said it was. The dispositive factor was not the  
2 right to comment, but the right to access.

3 I think the same analysis is echoed in Neuman v.  
4 Liles, 295 Oregon App. 340, which discusses an online  
5 review site.

6 And again, the Court looks at whether or not a  
7 member of the public can look at the site.

8 There's also the sort of history of this. If  
9 you look at page 6 of our -- of the plaintiffs' joint  
10 response, that top partial paragraph goes through the  
11 history in California courts of how that developed.

12 THE COURT: So help me understand what it means  
13 to have access then. If access is the key, does access  
14 mean the group is visible, anybody has the right to  
15 request permission to enter into the group, or is access -  
16 - does access mean something else?

17 MR. LENON: Well, the courts that have examined  
18 this, the Barrett court, the Neuman court, they were  
19 confronted with a scenario in which they -- the public  
20 could access all of the content. The individual posts or  
21 the actual substance readily -- was readily available to  
22 the public.

23 And I think that's the dispositive difference  
24 here. We weren't able to find a single case that said  
25 that a discussion or conduct that was occurring behind

1 closed doors in a place that was not accessible to the  
2 public would still somehow, nevertheless, count as a  
3 public forum.

4 I acknowledge the fact that there isn't a lot of  
5 case law here.

6 THE COURT: No.

7 MR. LENON: And so -- and I'm -- and I am  
8 sympathetic to Your Honor that, you know, this may be  
9 appealed one or the other, but I -- there also is the  
10 second prong, which is the matter of public interest. And  
11 I also think that the defendants are taking too broad of  
12 an approach there --

13 THE COURT: And we're going to get to that --

14 MR. LENON: -- relying on --

15 THE COURT: -- in just a moment.

16 MR. LENON: Okay.

17 THE COURT: Yeah. Was there anything else you  
18 wanted to say on the issue of the first prong, the  
19 unfortunate benefit of being first is that I tend to  
20 pepper the first person to speak with a lot of my  
21 questions. Were there any cases or any other points you  
22 wanted to make in response to my questions to Mr.  
23 Davidson?

24 MR. LENON: Well, yeah. All of this is on the  
25 first prong still, Your Honor.

1 THE COURT: Yes. Yes.

2 MR. LENON: There are two elements that the  
3 defendants have to satisfy under category (c), and the  
4 same element, the matter of public interest, is the same  
5 also for category (d) under anti-SLAPP.

6 THE COURT: Mm-hmm.

7 MR. LENON: So I suppose even if the Court were  
8 convinced that this isn't a public forum or a place open  
9 to the public, nevertheless you could still rule in favor  
10 of the defendants if you found that it was conduct in  
11 furtherance of the right of free speech on a matter of  
12 public interest.

13 That's why I was going to turn there next,  
14 because there isn't -- other than what we've just  
15 discussed about the public forum or place open to the  
16 public, there isn't really much else out there that we  
17 were able to find.

18 THE COURT: Okay.

19 MR. LENON: Other than access being the hallmark  
20 of --

21 THE COURT: Okay.

22 MR. LENON: -- of a place open to the public.

23 On the issue of public interest, this is vital  
24 to the defendants' motion, because if the speech in  
25 question or the conduct or however they want to categorize

1 it was not on a matter of public interest, then the  
2 anti-SLAPP statute does not apply.

3           And the defendants have attempted to say that  
4 all of this, all 600-and-some -- I think, by today they're  
5 up over 700 members of the group. I don't know how many  
6 posts or threads are in the group, because it's -- it is a  
7 private group. Presumably, with 700 members existing for  
8 a year or two years, there are thousands, tens of  
9 thousands of posts.

10           That's -- the issue is now whether the group  
11 itself is engaged in a debate on the public interest. The  
12 issue here is whether the specific speech, the alleged  
13 doxing speech, is itself a matter of public interest.

14           The defendants have argued that the Mullen v.  
15 Meredith Corp. case instructs the Court not to narrow the  
16 issue overly, and that is true, but that's not the  
17 plaintiffs' point. The plaintiffs have not sued the  
18 group. The plaintiffs have not sued the other 680 or  
19 690-plus members of the group.

20           The plaintiffs are concerned of the specific  
21 comments that were contained in the initial exhibits to  
22 Mr. Thenell's declaration in support of the temporary  
23 restraining order. Some of those comments have been  
24 reintroduced by the defendants in their exhibits. And it  
25 is the nature of those specific comments that are not a



1 matter of public interest.

2           And they're not -- there isn't -- despite what  
3 was argued today, there isn't that tight of a nexus  
4 between the specific posting of telephone numbers or  
5 e-mail addresses for employers couple with an exhortation  
6 for people to contact them with the broader debate over  
7 the school board policy.

8           And I want to first address the U.S. Supreme  
9 Court case that was brought up under the discussion  
10 with -- the specific discussion as with to respect to  
11 defendant Tofte. And I think that what was argued here  
12 today to the Court and what that case says is the contact  
13 information for the public officials is a matter of public  
14 interest. The U.S. Supreme Court has said that clearly,  
15 especially elected officials. No one is disputing the  
16 fact that constituents have the right to know how to get a  
17 hold of their elected officials to contact them to express  
18 their grievances, to petition for redress of grievance.

19           That's different than a public -- a limited  
20 public official, like a school board member, that this  
21 isn't their job. This is a volunteer position. They're  
22 elected to it, but these people all have individual  
23 private employers. And while they may have used the fact  
24 that they are employed or that they are employed by a  
25 particular employer in campaign material, that is no

1 different than using the fact that they are a parent, that  
2 they are a member of a church, or that they are, you know,  
3 a member of civic club. These are issues that are on  
4 their resumes, on their CVs.

5           That's not at issue here. If the defendants had  
6 merely said so-and-so works here, that would not rise to  
7 the level without the extra impetus of here's how you  
8 contact them.

9           And then later when we're discussing the merits  
10 on prong two, I'll go into a little bit about how the  
11 posts exhibit the intent as well. It's that specific  
12 level of detail that was not put into the public eye by  
13 the plaintiffs. That was put into the public -- or into  
14 this Facebook group by the defendants.

15           The specific statement to say with respect to  
16 Dave Brown, for example, that Dave Brown is the coach for  
17 Canby High School girl's tennis, that here is his direct  
18 supervisor, here's that individual person's extension,  
19 here's their e-mail address. I encourage everybody to  
20 contact them and register their complaints. That's not --  
21 nowhere in that post is there a nexus to these broader  
22 topics that the defendants are discussing. It's a  
23 specific post, and it directly falls under the anti-doxing  
24 statute. It's one of the elements of this new statute.

25           THE COURT: So let's --

1 MR. LENON: And so --

2 THE COURT: Let's back up just a little bit.

3 Are you saying that there is a difference  
4 between an elected official whose position requires that  
5 they not have another job and public -- a public official  
6 whose job is part-time or voluntary? Is the analysis the  
7 same or is the analysis different?

8 MR. LENON: I don't think that's the dividing  
9 line. I think the dividing line and what the Supreme  
10 Court has said and I think some of the California cases  
11 that were cited have said is that the elected official's  
12 contact info is a matter of public interested.

13 If an elected official has private employer,  
14 then that's different. I don't think it matters whether  
15 they're part-time or, you know, whether they're voluntary,  
16 if they get paid for their work as an elected official.  
17 It's their private employer's information that's not  
18 connected with their duties as a public official. That's  
19 what the legislature, in passing House Bill 3047, was  
20 carving out.

21 And so, essentially, you could look at this  
22 issue as House Bill 3047 was the legislature saying these  
23 specific categories of personal information are not  
24 matters of public interest.

25 That's not -- I'm using that as a matter of

1 analysis or example, Your Honor, that --

2 THE COURT: Right.

3 MR. LENON: -- one way of resolving this issue  
4 is to say, the legislature had to have consider all of  
5 these factors. They have been advised by legislative  
6 counsel. They're well-aware of the existence of the  
7 anti-SLAPP statute. They're well-aware of the existence  
8 of the First Amendment and Oregon's Article I, Section 8  
9 protections. And that those were specific legislative  
10 carve-outs that the Court can then say, okay, the broader  
11 debate or these other topics, these are matters of public  
12 interest. These particular things, the plaintiffs'  
13 personal e-mail address, private home address, private  
14 employer's contact info, pictures of their kids or  
15 location of their kid's school, those are not -- we're  
16 just going to say as a society those are not matters of  
17 public interest.

18 And to make that clear, we're going to create  
19 this private cause of action.

20 I do want to address one quick point while we're  
21 on that, and that was something that was said that -- I  
22 think by Mr. Davidson, that the line between the public  
23 interest and this not -- these not public interests is  
24 criminal conduct. That's not what's written into the  
25 statute. It certainly is the case that the -- that for a

1 suit alleging stalking, the legislature did tie that to a  
2 separate statutory criminal statute.

3           The legislature did not do that for harassment.  
4 So the legislature intended that plaintiff could have a  
5 cause of action for noncriminal harassment. Nowhere in  
6 the statute does it define harass in terms of any criminal  
7 statutes, nor does it say that the conduct has to rise to  
8 the level of criminal conduct.

9           So, again, I think this is evidence that the  
10 legislature considered this and concluded that these  
11 narrow limited categories of disclosures were not matters  
12 of public interest.

13           I think the other thing I'd like to briefly  
14 touch on is there's been a lot of argument so far today  
15 about protected speech. The analysis on prong one for  
16 anti-SLAPP is not whether the speech is protected. As the  
17 defendants pointed out, there may be constitutional  
18 defenses that they have. When we get to a discussion on  
19 the merits, it might be appropriate to discuss whether or  
20 not there are constitutional protections for the speech,  
21 which would provide an affirmative defense for them.

22           The analysis on prong one of the anti-SLAPP  
23 statute is whether the speech is on a matter of public  
24 interest. It's not whether it's protected First Amendment  
25 speech. It's whether it's on a matter of public interest.

1 And, again, I think that's where looking to what the  
2 legislature did in creating this new cause of action is  
3 instructive.

4 THE COURT: And so then how do I -- do I  
5 have -- how much guidance do the courts give me on how I  
6 define what is and is not in the public interest?

7 MR. LENON: Well, with respect to this new  
8 statute, I don't think there is much instruction, because  
9 it's so new. This may be the first case filed under it.  
10 I don't know.

11 But, again, I think that the legislature being  
12 mindful of all the existing laws and constitutional  
13 protections, nevertheless said, we're going to carve out  
14 these limited categories of speech and we are going to say  
15 that these are not protected or these are not -- with  
16 respect to the anti-SLAPP statute perhaps, matters of  
17 public interest. And I think that goes to resolve this  
18 perceived conflict between the two statutes.

19 THE COURT: Does the legislature have authority  
20 to say what is and is not in the public interest when  
21 there's constitutional rights involved? I know that's  
22 blurring --

23 MR. LENON: (Talking simultaneously causing  
24 audio difficulty)

25 THE COURT: -- prong one with prong two again,

1 but it -- if I'm going to accept that the legislature gets  
2 to define what is in the public interest, do they have  
3 that authority?

4 MR. LENON: And I understand. It's difficult to  
5 talk about these issues without --

6 THE COURT: Right.

7 MR. LENON: -- blurring them.

8 If the legislature were to pass a law or create  
9 a statutory provision that was unconstitutional, then, no.  
10 That would be exceeding their authority. The  
11 Constitution, both of the United States and of the State  
12 of Oregon supersedes the legislature.

13 But beyond that, if the -- if what the  
14 legislature is doing is not unconstitutional -- and as we  
15 cited in our response brief, there's a presumption of  
16 constitutionality.

17 THE COURT: Right.

18 MR. LENON: The Court has to try to construe  
19 these statutes --

20 THE COURT: Right.

21 MR. LENON: -- to be constitutional. Then, yes,  
22 the legislature has the authority to enact laws.

23 THE COURT: Okay. Okay. Thank you.

24 MR. LENON: I also want to quickly address your  
25 question to defendant Tofte, to Ms. Payne, that isn't

1 everything public under the defendants' view of things?  
2 Is -- wouldn't all information be in the public eye and  
3 therefore subject to anti-SLAPP?

4           And, again, I think if we look at the anti-SLAPP  
5 statute in the context of the anti-doxing statute, it does  
6 provide the Court some ability to draw some contours  
7 around what is in the -- you know, what's fair game and  
8 what's not fair game.

9           I don't think that it's fair to say -- again, I  
10 want to reiterate this, that the plaintiffs put this  
11 information out into the public. The plaintiffs did put  
12 their employers' identities into the public. But the  
13 anti-SLAPP -- anti-doxing statute does not say that  
14 personal information includes the employer's identity. It  
15 says it includes contact information for the plaintiff's  
16 employer. And they did not put that out.

17           So, again, to do -- I think House Bill 3047  
18 provides this Court the line drawing that you need in  
19 order to navigate what is a matter of public interest,  
20 what's not a matter of public interest, what is subject to  
21 anti-SLAPP, and what is not subject to anti-SLAPP.

22           And I think there's some other points that I  
23 could make, but they're probably more relevant prong two,  
24 the merits, so I think I'll leave it there.

25           THE COURT: Okay. All right.



1           Mr. Davidson, we'll finish up the prong one, and  
2 then we'll move into prong two.

3           MR. DAVIDSON: Thank you, Your Honor.

4           To address the point that the legislature was  
5 aware of the anti-SLAPP statute when it created the  
6 anti-doxing statute, I'm sure they were, and they didn't  
7 create any sort of carve-out.

8           And, in fact, you know, the legislature was  
9 actually very careful in drafting the anti-doxing bill to  
10 make sure that it did not chill public debate on public  
11 issues or issues of public interest.

12           I mean, we cited this in Ms. Barnett's motion on  
13 page 12. The testimony of Aaron Knott of the House  
14 Committee on Judiciary. "The only point where it becomes  
15 actionable doxing is, if by putting it online, you intend  
16 a constitutionally recognized harm. That means that you  
17 can put somebody's personal information online for a  
18 number of different reasons, you know, even if you want to  
19 expose them to political speech. They're an elected  
20 official and you think they need to hear from their  
21 constituents, that's fine. It's when you cross the line  
22 over to intending them a constitutionally recognized harm,  
23 something like harassment."

24           And we can -- in providing that testimony, he  
25 cited to State v. Roberson, which we discussed briefly at

1 the end of the motion, which instructs that even when  
2 you're talking about a criminal statute, which is not  
3 what's at issue here, but even when you're talking about a  
4 criminal statute, you have to construe the statute to  
5 exclude speech on issues of public concern or speech that  
6 you are able to engage in.

7           So, for example, in Robertson the Court struck  
8 down the -- I believe it was the coercion statute because  
9 it swept too much speech into it.

10           So it's not the case that by creating the doxing  
11 statute, the legislature was trying to define what it  
12 means to have speech on a public issue or an issue of  
13 public concern. It's simply drawing certain lines, as  
14 we've argued, and I won't rehash the arguments. That line  
15 has not been crossed here by any of the defendants.

16           To address Ms. Barnett specifically, all she did  
17 was e-mail her favorite winery to ask that plaintiff  
18 Powell's art be taken down, and then she posted that  
19 e-mail response from the winery owners to a group. That  
20 doesn't even come close to falling within the parameters  
21 of the statute, and it's very much in furtherance of the  
22 public debate about how should the public address these  
23 policies that they do not agree with and these board  
24 members that they oppose.

25           With respect to defining -- I think the Court is

1 searching for guidance as to what an issue of public  
2 interest is. And we discuss that on page 9 of our motion  
3 when we cite Snyder v. Phelps, which is the 2011 Supreme  
4 Court decision. It's basically we know it when we see it.

5 "Speech deals with matters of public concern  
6 when it can be fairly considered as relating to any matter  
7 of political, social, or other concerns of the community,  
8 or when it is a subject of legitimate news interest that  
9 is a subject of general interest and of value and concern  
10 to the public.

11 "The arguably inappropriate or controversial  
12 character of a statement is irrelevant to the question  
13 whether it deals with a matter of public concern."

14 The case that I discussed earlier, and I concede  
15 I don't know of any case in Oregon on this kind of  
16 statutory prohibition, but the KCOP case that I cited from  
17 California, I think does a really good job of saying like,  
18 look, even when there's a criminal statute saying that you  
19 cannot record -- you cannot create a surreptitious  
20 recording, that's going to be in furtherance of a  
21 discussion of a public issue or an issue of public  
22 interest when that recording is used in a broadcast about  
23 a topic of widespread interest.

24 In that case, it was the over prescription of  
25 painkillers by a particular doctor.

1           The Court ultimately said that the plaintiff had  
2 met his burden in the case for a variety of reasons that  
3 are distinguishable from this case, but as to prong one,  
4 the Court said, it doesn't matter that it's forbidden by  
5 law. It's conduct in furtherance of a public issue.

6           (pause)

7           I think that wraps up for my points, Your Honor.  
8 I don't know if there --

9           THE COURT: Okay.

10          MR. DAVIDSON: I don't know if the Court will  
11 entertain other comments from other defense attorneys,  
12 but --

13          THE COURT: Given the --

14          MR. DAVIDSON: -- it makes sense to have --

15          THE COURT: -- the unusual posture of this case,  
16 do any of the other attorneys have anything else you  
17 wanted to say as to point one, or prong one -- I keep  
18 calling it point one -- as to prong one before we move on  
19 to prong two?

20          MR. ACHARYA: Just very briefly, Your Honor.

21 One of the things that plaintiffs say is that by passing  
22 HB 3047, the legislature intended to carve conduct under  
23 HB 3047 out of the prong one of the anti-SLAPP statute.

24                 HB 3047 obviously doesn't say anything about the  
25 anti-SLAPP statute. So what plaintiffs are talking about

1 is an implied repeal.

2 And Oregon has the longstanding canon against  
3 implied repeal, and we're happy to provide further  
4 briefing on that issue if the Court wants it. But there's  
5 a longstanding canon against implied repeal.

6 And in this case particularly, I'll reiterate  
7 prong one of the anti-SLAPP statute is a procedural  
8 vehicle. HB 3047 makes certain substantive primary  
9 conduct actionable. To say that a statute about primary  
10 conduct would impliedly repeal parts of a procedural  
11 statute doesn't make any sense at all, and definitely  
12 doesn't make sense under the canon against implied repeal.

13 THE COURT: Okay. Anyone else on prong one?

14 (No audio response)

15 THE COURT: All right. Let's move to prong two.

16 MR. DAVIDSON: Your Honor, with respect to  
17 Ms. Barnett, there's not much to say. Despite having been  
18 informed that we were going to seek fees to ask the Court  
19 to hear Ms. Barnett's motion for purposes of determining  
20 fees, there's been no showing with respect to claims  
21 against Ms. Barnett. They were dismissed.

22 But even despite the dismissal, and as the Court  
23 can see from our objection to the proposed judgment, we  
24 put plaintiffs on notice that we were going to move  
25 forward with her motion, but we did not get any showing as

1 to her under prong two.

2           So with respect to Ms. Barnett, the Court should  
3 determine that had she not been dismissed, she would be  
4 the prevailing party on her motion.

5           THE COURT: Okay. Attorney for Ms. Tofte,  
6 anything you wanted to say as to prong two?

7           MS. PAYNE: Yes, Your Honor.

8           So the post at issue for Ms. Tofte was simply a  
9 posting of a link to Director Dehart's employer's website,  
10 and that link was to the core values page of director  
11 Dehart's employer's website.

12           As counsel for plaintiff just stated in his  
13 argument on prong one, plaintiffs concede that if a  
14 defendant simply says so-and-so works here, that would not  
15 constitute doxing.

16           And as plaintiffs' counsel also said, that the  
17 anti-doxing statute does not prohibit simply posting an  
18 employer's identity.

19           What the anti-doxing statute does prohibit is  
20 knowingly causing personal information to be disclosed.  
21 And personal information is defined as contact information  
22 for an employer. It specifically prohibits contact  
23 information and not simply the identity of an employer.

24           Ms. Tofte never posted any contact information  
25 for Lam Research, which is Director Dehart's employer.

1 What she did post was a link to the website, and then she  
2 listed here are the core values for Lam Research, and then  
3 she stated, "He seriously can't know this, and he remains  
4 working for them. Someone should point these core values  
5 out to him. He needs to know this info. They seriously  
6 conflict."

7           Again, simply pointing out the core values of  
8 Director Dehart's employer and a link to the website is  
9 not posting contact information under the statute, and  
10 therefore it was not a disclosure of personal information.

11           Plaintiffs argue that anyone could click on the  
12 link and find the contact information for Director  
13 Dehart's employer, and therefore it was a disclosure of  
14 contact information.

15           And, again, as we argued in our reply, that's  
16 simply too attenuated. Defendant Dehart did not  
17 disclose -- or defendant Tofte did not disclose any  
18 contact information. Lam Research disclosed that contact  
19 information on its website.

20           And defendant Tofte did not include a link to  
21 any specific contact page or put that contact information  
22 on the NEED Facebook page.

23           So plaintiffs fail to meet their burden on  
24 disclosure of contact information.

25           And on the second element, plaintiffs fail to

1 their burden of meeting a *prima facie* case that defendant  
2 Tofte knew or reasonably should have known that plaintiffs  
3 did not consent to the disclosure.

4 Here, defendant -- or director -- excuse me --  
5 plaintiff Director Dehart disclosed that he worked at Lam  
6 Research on his publicly available Lam Research page.

7 So to the extent that simply posting the  
8 information that defendant Tofte posted, that's the simple  
9 fact that he worked at Lam Research, on the Facebook page  
10 can even be considered a disclosure, that information was  
11 information the Director Dehart disclosed himself on a  
12 publicly available linked in page.

13 So there would be no reason to know that  
14 Director Dehart himself did not want that information  
15 disclosed again by anyone else.

16 And then finally, plaintiffs fail to establish  
17 that defendant Tofte intended to harass Dehart by the  
18 disclosure.

19 Again, here Tofte simply stated the core values  
20 that Dehart's employer had on its website, and simply  
21 stated that she believed that Dehart's conduct conflicted  
22 with those core values.

23 She did not encourage anyone to contact Lam  
24 Research. She did not post contact information for Lam  
25 Research. And she also expressly stated that she did not



1 want anyone to get fired from their job in the Facebook  
2 post.

3 Without posting contact information, without  
4 encouraging anyone to contact Lam Research, and expressly  
5 disavowing that she wanted anyone to get fired, there  
6 simply is no evidence of an intent to harass Director  
7 Dehart in this case.

8 And then, finally, plaintiffs must establish  
9 that a reasonable person would be harassed by such  
10 disclosure.

11 Again, there simply is just not evidence here  
12 that a reasonable fact finder could find that a reasonable  
13 person would be harassed by this type of disclosure.

14 The only evidence that plaintiffs put on is that  
15 Director Dehart was afraid of going in to public places,  
16 afraid of having people drive by his neighborhood, and  
17 that he was keeping protection in his home.

18 And it's not reasonable someone would fear  
19 someone coming to their house by disclosing their place of  
20 employment.

21 Plaintiffs put on no evidence that, for  
22 instance, defendant Tofte disclosed Director Dehart's home  
23 location. And so there's no nexus between the type of  
24 anxiety and fear that Director Dehart is placing in the  
25 record.

1           For those reasons, plaintiffs have failed to  
2 meet their prima facie case against defendant Debbie  
3 Tofte.

4           THE COURT: Okay.

5           MS. PAYNE: Do you have any questions,  
6 Your Honor?

7           THE COURT: Not at this time.

8           The attorney for AJ Schwanz, any argument as to  
9 prong two?

10           MX. PECK: Yes, Your Honor. Thank you. This is  
11 Rian Peck. So I will follow Ms. Payne's lead and walk  
12 through the elements of the statute as they apply to  
13 Ms. Schwanz.

14           So starting with the posting -- the information  
15 that was posted. Ms. Schwanz posted on the NEED group a  
16 link to an article in the Canby Herald announcing that  
17 Mr. Brown was going to be a tennis coach at Canby High  
18 School for the girl's tennis team. Mr. Brown participated  
19 in that interview.

20           And, in any event, posting a link to a news  
21 article is not something that falls within the definition  
22 of personal information within the statute. There was no  
23 contact information that was posted as part of posting  
24 that link.

25           So really, the only thing that would be focused

1 on in this is posting the name, e-mail address, and phone  
2 number for the athletic director at Canby High School.

3 And it is Mr. Brown's responsibility to show  
4 that posting that was the disclosure of private  
5 information with the intent to stalk, harass, or injure  
6 him, and that Ms. Schwanz knew or should have known that  
7 he did not consent to that disclosure, and that a  
8 reasonable person would be harassed by disclosing that  
9 limited subset of information.

10 So, starting with the knew or should have known  
11 element about that there was no consent for this  
12 information to be posted online.

13 Well, first of all, Ms. Schwanz, I don't think  
14 knew or reasonably could have known that Mr. Brown did not  
15 want the athletic director's name and work contact  
16 information to be posted online.

17 He himself has advertised, you know, first of  
18 all, in a news article, and second of all, at school board  
19 meetings that he is a tennis coach to high school girls at  
20 Canby High School.

21 Now, of course, he didn't say, and the athletic  
22 director's name is this and this and this is his phone  
23 number. But it is not -- it's not a leap to look at that  
24 as, you know, being part and parcel of this employment.

25 And then, you know, in any event, Oregon law

1 explicitly like permits and even encourages people to  
2 submit complaints about people who are working with  
3 children, who are potentially harming those children.

4           There is an entire set of regulations under OAR,  
5 I believe it's -- one moment -- it's the Teacher Standards  
6 and Practices Commission, which applies to all educators  
7 in Oregon. And it acknowledges under OAR 584-020-0000  
8 that people can submit complaints about educators. Any  
9 member of the public can do that.

10           And then under OAR 584-020-0010 it states that  
11 the competent educator must promote equitable learning  
12 opportunities and must recognize the worth and dignity of  
13 all persons and have respect for each individual that they  
14 are working with.

15           So in that context, Ms. Schwanz had every reason  
16 to believe that it was perfectly appropriate to post  
17 contact information about where to submit potential  
18 concerns for student safety about potential discrimination  
19 on Mr. Brown's behalf.

20           And then with respect to Ms. Schwanz's intent to  
21 harass or stalk or injure, I think what plaintiffs are  
22 really focused on here is the harassing element.

23           And Ms. Schwanz herself has said she had no  
24 intent to harass Mr. Brown. She was concerned about  
25 student safety.

1           And was -- she herself, and the plaintiffs have  
2 not produced any evidence otherwise, she herself did not  
3 even contact Canby High School after she posted this  
4 information. She encouraged people to make truthful  
5 comments, share their personal experiences if they had  
6 them, but she did not do anything more than that.

7           And then in terms of the reasonable person  
8 element of the statute, plaintiffs also fail on that,  
9 because just as with Mr. Dehart, Mr. Brown has said that  
10 he is afraid to be inside of his own home and he's afraid  
11 to have his garage door open now and has some difficulty  
12 sleeping.

13           But it is not reasonable for a person to  
14 experience that kind of emotional distress, if we can call  
15 it that, simply because somebody posted the name, e-mail  
16 address, and phone number of the athletic director at a  
17 high school.

18           THE COURT: Are you suggesting that I can  
19 decide --

20           MX. PECK: So for --

21           THE COURT: Are you suggesting that I can decide  
22 as a matter of law what type of trauma response or  
23 emotional distress is reasonable, or does that -- doesn't  
24 that require some expert opinion or analysis?

25           MX. PECK: Your Honor, I think it's more so that

1 there's no nexus whatsoever between the information that  
2 was posted online and the location of the fear that Mr.  
3 Brown says that he is claiming to have. He's not afraid  
4 to go to school because the athletic director's  
5 information was posted. He's afraid to go home.

6 THE COURT: I think what I'm getting at is that  
7 fear and emotional distress can sometimes not be rational.  
8 I think that's why I was kind of getting lost, but your  
9 point is made.

10 Okay. Go ahead.

11 MX. PECK: That is all on behalf of Ms. Schwanz.  
12 And apologies, Your Honor. I'm looking at two  
13 things at once.

14 That's all for Ms. Schwanz right now. Thank  
15 you.

16 THE COURT: Okay. The attorney for Tamara  
17 Brookfield, anything you wanted to say as to prong two.

18 MR. ACHARYA: Thank you, Your Honor. This is  
19 Athul Acharya. I just want to pop up for a second and  
20 enunciate the analytical framework here.

21 THE COURT: Mm-hmm.

22 MR. ACHARYA: Just so that we're all on the same  
23 page. So prong two is about the merits. We're at the  
24 merits now.

25 Plaintiffs have the burden here, and they have

1 to meet their burden both as to their claim and as to  
2 defendants' constitutional defenses.

3           Now, as to the elements of their HB 3047 claim,  
4 I'm mostly going to rest on what able co-counsel and what  
5 the briefs say. Specifically on whether Ms. Brookfield  
6 could have known that Director Shannon didn't consent to  
7 her post when he himself had disclosed Selectron's  
8 identity as his employer and Selectron had disclosed their  
9 phone number on the Internet and on whether Mr. Shannon  
10 was actually harassed and on whether a reasonable public  
11 official would have been harassed on those things, I think  
12 co-counsel and our briefs have kind of covered the field.

13           I want to talk briefly about the fact that  
14 legislature did use the word "disclose" in the statute.

15           And while they've defined disclose, they defined  
16 sort of the mechanisms of disclosure, transfer, publish,  
17 distribute, exhibit, and the type of speech act that might  
18 be in the disclosure, advertisements and offers, but they  
19 haven't said anything in their definition of disclosure  
20 about what type of information is being disclosed.

21           They only thing they've said about that it  
22 they've used the word "disclose," and that word has to  
23 mean something. And the thing that it means in plain  
24 English is that the thing being disclosed was previously,  
25 to some degree, secret.

1           And for all of the plaintiffs, but especially --  
2 and I'll talk for Ms. Brookfield and plaintiff Shannon,  
3 Director Shannon disclosed his employer on his campaign  
4 website and Selectron disclosed their phone number on  
5 Google. Ms. Brookfield just put two and two together.  
6 She didn't disclose anything.

7           So I think plaintiffs fail to meet their burden  
8 on the disclosure prong.

9           They also fail to meet their burden on the  
10 causation prong. So HB 3047 requires a causal connection  
11 between the supposed disclosure and the severe emotional  
12 distress that a plaintiff felt.

13           And in this case, any emotional distress that  
14 plaintiffs felt was too causally disconnected from  
15 defendants' disclosures.

16           For example, Director Shannon was fired from his  
17 job. That was the source of his distress. And that is a  
18 supervening third party cause. It breaks the causal chain  
19 from anything Ms. Brookfield said and from the distress  
20 that he felt.

21           If the causal chain does proximately connect to  
22 Ms. Brookfield's disclosure, then it also has to connect  
23 to Mr. Shannon's original publication of the information  
24 on his own website. And either way, Ms. Brookfield isn't  
25 the cause. And she's especially not the cause of some of



1 the stuff that's in Director Shannon's declaration, like  
2 the activity inside of his home.

3           Nothing in Ms. Brookfield's post touched on  
4 Director Shannon's home. Didn't post about his home  
5 address. Didn't post about his neighborhood. Didn't post  
6 about what his home looked like.

7           Selectron isn't even in Newberg, by the way.  
8 Selectron is in Portland.

9           So there was no causal connection whatsoever  
10 between what Ms. Brookfield posted and the activity  
11 outside of his home nor of any anxiety that he suffered as  
12 a result of that.

13           And really no causal connection to any of the  
14 anxiety that he suffered, because he suffered that anxiety  
15 because he was fired from his job. That's a decision that  
16 Selectron made. We don't know the basis for that  
17 decision. But either way, they are the supervening third  
18 party cause of that anxiety.

19           I also want to talk a little bit about intent,  
20 because that's another element of the *prima facie* case  
21 that plaintiffs have to make.

22           The only thing that they have to say about  
23 Ms. Brookfield's intent is that she urged people to call  
24 Selectron and tell them about Director Shannon's  
25 demonstrated conduct and to avoid hearsay. And from that,

1 they leap to the idea that she wanted him to be harassed.

2           Now, first she didn't tell anyone to contact  
3 Director Shannon.

4           And, second, just contacting Selectron is not  
5 enough to infer an intent to harass. And what she says in  
6 her declaration, which is a much more plausible inference,  
7 is that she wanted to participate in the political process  
8 and contribute to the public debate.

9           She hoped that Selectron would give Director  
10 Shannon some equal opportunity training, help him  
11 understand about how this conduct was, in her view,  
12 harming students and teachers in Newberg, and potentially  
13 change his conduct in office.

14           And she also wanted to give Selectron the  
15 opportunity to engage in the public debate that their  
16 employee had started using their name. That was her  
17 intent. Not to harass. Not to cause any anxiety or fear  
18 or apprehension in Director Shannon, but to participate in  
19 the political process and to contribute to the public  
20 debate.

21           And then the last thing I want to say, this is  
22 on the constitutional defense, and this is sort of the  
23 backstop here.

24           If the plaintiffs have made out all of the  
25 elements that HB 3047 requires, despite the arguments that

1 we've made so far, then the First Amendment kicks in.

2           And the First Amendment -- and I want to be  
3 clear about this because, you know, plaintiffs will say  
4 that whatever the First Amendment protects, it doesn't  
5 protect, you know, the disclosure of Director Shannon's  
6 employer's phone number. That does -- that's not  
7 political speech is something the plaintiffs will argue.

8           But the thing is when it comes to political  
9 speech, the Supreme Court has been exceptionally clear  
10 that what is protected is not just core political speech,  
11 but also any speech which, if outlawed, would chill core  
12 political speech.

13           So outlawing speech adjacent to political  
14 speech, because it would create a chilling effect on  
15 political debate and sap our democratic vitality, the  
16 First Amendment protects such speech as well.

17           And it says that in McIntyre, which is cited in  
18 our briefs, and McIntyre has a long quotation where it  
19 cites a bunch of other older First Amendment cases as  
20 well.

21           And I'll give you just a brief example,  
22 Your Honor. Suppose that Director Shannon worked not at  
23 Selectron but at Amazon. People have a lot of opinions  
24 about Amazon. Some people think it's a trusted source of  
25 goods and services, and some people think it's a big, you

1 know, mega corporation that they don't like.

2           And what -- the fact that in the hypothetical  
3 Director Shannon worked at Amazon would be very relevant  
4 to the public debate.

5           Now, if a person, a Newberg citizen, a  
6 constituent, who reads the statute could well read it  
7 because it's -- because it prohibits something about  
8 talking about something about a person's employer, could  
9 well read it to prohibit talking about the fact that, in  
10 the hypothetical, Director Shannon works at Amazon.  
11 Maybe, maybe not. But they could be chilled.

12           More likely, they would read it to prohibit  
13 their posting a link to [www.Amazon.com](http://www.Amazon.com), because somewhere  
14 on [Amazon.com](http://Amazon.com)'s website there is a way to contact Amazon.  
15 And, in fact, that is plaintiffs' argument, not as to  
16 Ms. Brookfield, but as to Ms. Tofte, that because she  
17 posted a link to Lam Research, and somewhere on Lam  
18 Research's website there's a "contact us" button, that she  
19 posted contact information for Lam Research.

20           And so a reasonable person reading the statute  
21 would be chilled from engaging in the political debate in  
22 that way.

23           And to avoid that kind of chilling effect, the  
24 Supreme Court has said that this type of statute, as  
25 applied to political speech, speech adjacent to political

1 speech, would be unconstitutional if it applied to such  
2 speech.

3 THE COURT: Okay. Thank you.

4 All right. I think I covered all the  
5 defendants.

6 Mr. Lenon?

7 MR. LENON: Thank you, Your Honor. I'm going to  
8 try to go through this.

9 I had anticipated with the burden shifting, that  
10 I was going to go first, but I'm happy to respond.

11 THE COURT: Oh, I apologize.

12 MR. LENON: It's okay. This is a complicated  
13 case.

14 THE COURT: The burden hasn't technically  
15 shifted yet because I haven't ruled on prong one. So for  
16 what that's worth.

17 MR. LENON: That's very true, Your Honor.

18 So I just -- first, I'd like to clean up one  
19 quick thing from prong one. And that was something  
20 that -- and I apologize for -- if I'm mispronouncing  
21 anybody's names. But Mr. Acharya stated that I had argued  
22 the anti-doxing statute was an implied repeal.

23 I apologize if I gave that impression. That was  
24 not actually what I was attempting to say. More that,  
25 that statute could provide some guidance for the Court to

1 do line drawing in the matters that we discussed on prong  
2 one.

3 I think that here Mr. Davidson's statement about  
4 the testimony to the legislature regarding the passage of  
5 House Bill 3047 is really kind of the most significant  
6 thing here. And what that testimony said, what the  
7 legislature passed this statute with the understanding of  
8 was that the threshold was the intent.

9 There's been a lot of discussion about what is  
10 or is not a disclosure, what is or is not employer's  
11 contact information, and that's all relevant.

12 But the first element of the anti-doxing  
13 *prima facie* case is disclosure of personal information  
14 with the intent to injure, harass, or stalk the plaintiff.

15 And, so, when the legislature included that  
16 intent prong, that's the limiting factor. That's what  
17 prevents this from being this broader potentially  
18 unconstitutional statute. And the plaintiffs are required  
19 to provide some evidence of intent.

20 I do want to briefly touch on what the  
21 plaintiffs' burden under this prong is.

22 The anti-SLAPP statute, ORS 31.150(3) states  
23 that it requires a plaintiff to present "substantial  
24 evidence to support a *prima facie* case." This sounds like  
25 a high threshold to meet. However, the Oregon courts have

1 explained that what this is, is the burden of production,  
2 not the burden of persuasion.

3           It's merely the plaintiffs' burden to present  
4 evidence on each of the elements, not necessarily to  
5 present more persuasive evidence than the defendants  
6 present. And that's what the court -- the Oregon Court of  
7 Appeals -- or actually, I apologize -- the Oregon Supreme  
8 Court in the Handy case that's -- this is cited on page 12  
9 of our response brief, that it's improper for the Court to  
10 weigh the quality or the amount of evidence against each  
11 other.

12           So with that background in mind, I'm going to  
13 proceed through each one of the cases here.

14           Starting with defendant Barnett, as Mr. Davidson  
15 said, this -- the procedure -- and as we discussed  
16 earlier, I mean, the procedural posture of this is a  
17 little bit muddled at this point.

18           The plaintiffs had anticipated, given the  
19 unopposed nature of the motion to amend the complaint and  
20 the rules of the Court saying that the leave shall be  
21 granted liberally, that the first amended complaint would  
22 be the operative pleading by the time we got to the  
23 argument stage here.

24           That's obviously not the case. The plaintiffs'  
25 response was premised on the first amended complaint,

1 because I do think it solves a lot of the procedural  
2 problems that were identified.

3 In the first amended complaint, obviously,  
4 Ms. Barnett has already been dismissed. So there isn't a  
5 lot of discussion as to the merits in the response.

6 However, the plaintiffs did incorporate all of  
7 the prong one analysis for all the defendants into that  
8 Ms. Barnett as well.

9 With respect to defendant Tofte, it's not the  
10 case that the plaintiffs have conceded that the link is  
11 merely the equivalent to the identification of the  
12 employer in this case. The link is contact information  
13 itself.

14 And I think that, you know, if you imagine a  
15 business that exists wholly online, the only address that  
16 a business would have -- that an employer would have would  
17 be their Web address. So I don't think that as a matter  
18 of law the Court can conclude that a link is not contact  
19 information.

20 Furthermore, that link links to a page which has  
21 a contact link at the bottom of that page. It's not  
22 required to go digging through a lot of other pages on the  
23 site.

24 But, again, the threshold question before the  
25 Court is was that disclosure made with the intent to



1 harass.

2           And, here, I think if we turn to Ms. Tofte's  
3 declaration and the exhibits to it, this is very  
4 instructive.

5           Now, Ms. Tofte, like the other defendants, had  
6 entered a declaration, a *post hoc* rationalization of her  
7 posts on this Facebook group. She has now disclaimed any  
8 intent to harass. But what's more instructive than what  
9 she states in her declaration is what was actually posted  
10 on the Facebook group. And at Exhibit 1, page 2 you'll  
11 find the actual post.

12           Ms. Tofte posted the link to Lam foundation, and  
13 while she did say at the bottom of her list of the core  
14 values, she stated, "He needs to know this info."  
15 Presumably "he" being Mr. Dehart.

16           The very next post is from a person identified  
17 as Angie Sproucher or Spratcher (ph) that says  
18 essentially, I'm going to go down and talk to Lam Research  
19 about this. And there is no other post from Ms. Tofte  
20 walking that back or disclaiming her intent.

21           So I think there's clear evidence here from  
22 which a jury could infer intent, and that is all that is  
23 required to meet the burden at this stage of the  
24 proceedings.

25           Further evidence of the intent, if you go to the

1 next page, page 3, there's now a discussion about the  
2 difference between identifying an employer for the  
3 purposes of perhaps boycotting that business, which would  
4 be protected conduct, and the difference between  
5 identifying specific contact information of a person's  
6 supervisor or boss or encouraging people to contact the  
7 employer and complain.

8           And although the top is cut off, it looks as if  
9 there's a discussion here involving three people.

10           Owen Lowe, who initially started this thread  
11 discussing trying to find out the identity of the  
12 employers for the purposes of "avoiding giving them my  
13 business and letting their employers know why."

14           So it's this discussion is not merely occurring  
15 in the context of a potential boycott, but also with the  
16 express contemplation that the employers would be  
17 contacted.

18           On page 3, there's a discussion that -- the top  
19 is cut off, but I believe it's somebody named Garrett  
20 Lukins has posted, and you can't see the very top of it,  
21 kind of reading the very bottom of that cutoff line, it  
22 looks like he is -- he posts, are we saying -- "Are we  
23 trying to get people fired?" He said, "It's one thing to  
24 protest their political actions and values. It's another  
25 to go after their job."

1           He says in that second or third full paragraph,  
2 "I'm not completely caught up on the political details of  
3 the situation, but a no-holds-barred fight seems like a  
4 way to roll in the mud with pigs." I'm sorry. The part  
5 I'm looking for is right above that actually.

6           He said, "I'm" -- oh, yeah. It's the section  
7 that starts, "I'm all for calling a scumbag a scumbag and  
8 protesting, but to go after somebody's job for engaging in  
9 the political process sounds a lot like something this  
10 group would despise and stand against if the tables were  
11 turned."

12           And I -- that, I think, gets precisely to the  
13 intent. It also goes to, as we'll discuss a little bit  
14 later, this reasonable person standard, whether a  
15 reasonable person would be harassed by the disclosure.

16           And the important thing with respect to  
17 Ms. Tofte is that in the context of this debate she weighs  
18 in here as well and says, halfway down, "I don't want to  
19 get anyone fired, but I would like to see them held  
20 accountable for their actions." She doesn't provide any  
21 context for what that means at the time that the post is  
22 made.

23           And it's pretty clear that what is interpreted  
24 by at least one person on the thread, Mr. Lukins, or  
25 Garrett Lukins -- I don't know the gender of the person

1 actually. "Debbie Tofte, that sounds like a justification  
2 in defense of going after somebody's job, 'held  
3 accountable' because you perceive them as throwing the  
4 first punch."

5 Then there's a response from Owen Lowe, and  
6 after that, Debbie Tofte on page 4 says, "Owen, thanks for  
7 the follow up."

8 At no point in there does she try to clarify  
9 what she means by "held accountable."

10 She might not want them to lose their job, but  
11 that's not the threshold for intent to harass. Harassment  
12 doesn't require the employer to have fired the plaintiff.  
13 Harassment is defined in the statute, and I'll get to that  
14 in second when we get to that element.

15 But with the intent to harass component here,  
16 it's not dispositive whether Ms. Tofte says then or now  
17 that she didn't intend for anyone to get fired. The  
18 important thing is did she intend for the disclosure to  
19 result in harassment, and that seems to be pretty clear  
20 from looking at this thread. At least one other member of  
21 their own Facebook group interpreted it that way. And she  
22 fails to clarify or correct the record in any way at that  
23 point.

24 With respect to the consent to the disclosure of  
25 information, it's this also ignores the intent. It's the

1 disclosure with the intent to harass that is the operative  
2 first element.

3           And if the statute itself states that  
4 immediately after the first element, defendant with the  
5 intent to stalk, harass, or injure the plaintiff,  
6 knowingly caused personal information to be disclosed and  
7 the defendant knew or reasonably should have known the  
8 plaintiff did not consent to the disclosure. The  
9 disclosure with the intent. And I think the defendants  
10 are reading that out of the statute here.

11           With respect to the actual intent, again, this  
12 is part of that first element, and it's satisfied, or at  
13 least there's enough of a *prima facie* case for it to  
14 proceed past this point in the process in the posts  
15 themselves.

16           And I don't think the Court needs to look at the  
17 *post hoc* rationalizations in the declaration. I think  
18 it's important to look at what was actually posted at the  
19 time and what the context of that post was, how the other  
20 people in the group interpreted it.

21           With respect to the reasonable person standard,  
22 this also is pretty evident from this thread that at least  
23 one person is expressing that we shouldn't do this because  
24 we would feel harassed if it was done to us. We -- this  
25 is the sort of behavior, Garrett Lukins says, this group

1 would despise and stand against if the tables were turned.  
2 That is your reasonable person standard.

3           With respect to the actual harassment itself,  
4 there's no way to rule as a matter of law the  
5 reasonableness of the plaintiff's subjective emotional  
6 distress.

7           The statute at (1)(c) defines harassment to mean  
8 to subject another to severe emotional distress such that  
9 the individual experiences anxiety, fear, torment, or  
10 apprehension that may or may not result in a physical  
11 manifestation of severe emotional distress or a mental  
12 health diagnosis and is protracted rather than merely  
13 trivial or transitory.

14           So there's no -- there's nothing in the statute  
15 that ties the particular emotional distress that the  
16 plaintiff experiences to the category of personal  
17 information which is disclosed.

18           Furthermore, it's entirely reasonable that if  
19 somebody has had one of these categories of personal  
20 information disclosed with the intent to harass, that they  
21 may justifiably be concerned that another category, such  
22 as their home address, would be the next thing to be  
23 disclosed.

24           So, again, I think there's enough evidence with  
25 respect to defendant Tofte for the plaintiff to have met

1 his burden to -- Trevor Dehart to have met his burden  
2 here.

3           With respect to defendant Schwanz and plaintiff  
4 Brown, the name, e-mail address, and phone number of the  
5 plaintiff's supervisor, it might be a limited set of  
6 information, but I mean, I don't know what other contact  
7 information could be posted.

8           I mean, that's providing -- you know, she  
9 didn't -- I guess she didn't post a fax number or a social  
10 media profile, but surely that is sufficient to satisfy  
11 the statutory requirement that it's the contact  
12 information for the plaintiff's employer.

13           With respect to the consent as to plaintiff  
14 Brown, again, this is -- this ignores the intent. This  
15 ignores the context in which the post was made. And that  
16 post is found at the declaration of Ms. Schwanz Exhibit 8.

17           Ms. Schwanz also entered a declaration in which  
18 she now disclaims any intent to harass. In her  
19 declaration at paragraph 23 she says, "My intent was thus  
20 twofold. One, give high school students access to  
21 information they may need to report safety issues about a  
22 coach.

23           "And two, to help chair Brown understand the  
24 harmful effects of policies he was promoting."

25           That sounds like a reasonable intent. The

1 problem is that's not what's found in the actual post.

2           And there is no information -- this has now been  
3 framed as a matter of children's safety. That's not --  
4 that information, frankly, is not in the post.

5           The post itself is identifying the employer,  
6 providing the contact info for the employer, and then in  
7 bold, "If you know students who have been coached by chair  
8 Brown, please encourage them to share their  
9 stories/concerns with the Canby athletic director."

10           There's no mention of student safety in this  
11 post. There's no indication that Ms. Schwanz was  
12 requesting that people call in to provide context to  
13 plaintiff Brown about the way his actions have affected  
14 people. That could have been the intent, but that's not  
15 what was stated in the post.

16           Furthermore, we just received -- everybody  
17 should have gotten the subpoena from Canby School  
18 District, and a copy was sent to the Court as well. So I  
19 want to correct one thing. Although it's not actionable  
20 under this statute, because it occurred prior to the  
21 enactment of the statute, AJ Schwanz did, in fact, contact  
22 the athletic director at Canby High School on January  
23 27th, and that's in the Canby packet at number 1, 2, and  
24 8. There's some duplication in there.

25           But furthermore, other people took her post as



1 an exhortation, which it was, to contact the employer with  
2 "concerns." And at the very bottom of Exhibit 8, page 3  
3 of 3, Melanie Springer-Mock (ph) posts, "I wrote to the  
4 Canby athletic director on Sunday and got a quick reply."  
5 That also was found in the materials which Canby  
6 submitted, and it looks like it is on page number --  
7 again, there's a lot of duplication, so the first  
8 occurrence is on page 11, and then there's numerous  
9 republications of that in that material.

10           So the -- not only was there no consent to the  
11 disclosure of this particular person's contact info, and  
12 there's no way to infer that intent simply from the fact  
13 that plaintiff Brown mentioned in an article that he was  
14 working there or, you know, maybe used it in a campaign  
15 material or whatever context he has stated the identity of  
16 an employer, there's way to infer from that he consented  
17 to Schwanz, or anybody else for that matter, posting  
18 detailed contact information and asking the people on the  
19 group to contact this employer with concerns.

20           As I said, there's no evidence of a safety issue  
21 to children that was -- there no evidence anywhere in the  
22 record of any admissible evidence of safety concerns, and  
23 it certainly wasn't in her posting.

24           Turning to defendant Brookfield, plaintiff  
25 Shannon versus defendant Brookfield, the discussion around

1 disclosure is something that the defendants have made  
2 quite a bit of deal about.

3           And in the response briefing from the plaintiffs  
4 at page 13, footnote 7, there's quite of black letter law  
5 cited here that it's only when there's a -- there's no  
6 statutory definition for a term that the Court can resort  
7 to the plain meaning. The Court is not allowed to  
8 substitute definitions of terms for the legislature.

9           Here, (1) (1) (a) defines disclose to include but  
10 not limited to transfer, publish, distribute, exhibit,  
11 advertise, and offer. Nowhere in that definition does it  
12 require that it be something that was not previously known  
13 to the world.

14           And were that a requirement, it would  
15 effectively read that anti-doxing statute out of  
16 existence, because as Your Honor pointed out earlier in  
17 this hearing, virtually all the information, maybe with  
18 the exception of what school the plaintiffs' children  
19 attend, is largely available in today's world.

20           Most people have social media. Most people have  
21 LinkedIn accounts in which they post their employment  
22 information, at least their employer's identity. Many  
23 people include pictures of their children in their social  
24 media postings.

25           There -- we used to get these things called

1 phone books that had people's personal phone numbers and  
2 addresses in them. That's no longer a factor of today's  
3 world, but it's still easily searchable and findable on  
4 the Internet, somebody's home address, their phone number,  
5 their e-mail address.

6           So, it cannot be the case that legislature  
7 intended this statute only to cover this narrow group of  
8 hypothetical plaintiffs who have never put any information  
9 out into the world, who have never created a link to an  
10 account, who had never given their CV out to anybody, who  
11 had never posted anything on the Internet, who had never  
12 been listed in phone book. That simply cannot be what the  
13 legislature intended. And when construing a statute, the  
14 Courts are required to give full effect to the entire  
15 statute.

16           So I think that there's no way that disclosure  
17 has to include private information.

18           With respect to causation, the way the statute  
19 is written, they don't -- the legislature didn't use the  
20 word "cause." It says, the element is the plaintiff is  
21 stalked, harassed, or injured by the disclosure.

22           There's some implied causation there, but I  
23 don't think that it's fair to say that if a person makes  
24 the disclosure and then somebody else does something, that  
25 that negates the fact that the disclosure was made.

1           If there's otherwise evidence of intent, and  
2 that disclosure falls under the statute, and if the  
3 plaintiff is harassed by the disclosure, then causation is  
4 satisfied. It's -- it doesn't have to be a very high bar  
5 to cross. Certainly there's no threshold or standard  
6 that's written into the statute.

7           The emotional distress damages are written very  
8 broadly. They don't require physical manifestation. They  
9 don't require a mental health diagnosis. Certainly,  
10 there's no requirement that they be rational. So I think  
11 that's all that's needed to survive this stage of, the  
12 *prima facie* case stage, is the fact that the plaintiffs  
13 have said that they were harassed by the disclosure.

14           We'll get a chance to, if this case moves on, to  
15 do some discovery, and perhaps there will be a summary  
16 judgment down the road in which the defendants are able to  
17 prove that they were not, in fact, harassed or caused  
18 emotional distress. But that's not the stage of the  
19 proceeding that we're in.

20           With respect to the constitutional defense, you  
21 know, I mean, this is -- the anti-SLAPP statute --  
22 anti-SLAPP motions have to be filed prior to any other  
23 responsive pleading. None of the defendants have entered  
24 an answer. Certainly none of them have pled any  
25 affirmative defenses.

1           And so to the extent that they have a  
2 constitutional defense, it has to be that they're relying  
3 on this Court to find that the anti-doxing statute is at  
4 least in part unconstitutional on its face.

5           And I think that's pretty well briefed in our  
6 briefing, but there is a presumption of constitutionality  
7 that the legislature is entitled to. Perhaps there will  
8 be some affirmatives defenses down the road.

9           But, again, at this stage, it's not the Court's  
10 job to weigh evidence on one side or the other, merely to  
11 establish whether the conduct falls under the anti-SLAPP  
12 statute, and if it does, whether the plaintiff has  
13 presented a minimum burden of a prima facie case.

14           And I think that's all I have on that. I think  
15 I've covered everything that everybody said, hopefully.

16           THE COURT: Okay. Anybody else want to be  
17 heard? I guess since we started with defendants, we could  
18 end with them. Although, I think Mr. Lenon is right, that  
19 he does at this stage have the burden of proof.

20           So we could end here, unless someone wants to  
21 say anything else.

22           MS. PAYNE: Just briefly, Your Honor, and I  
23 would not be opposed if -- to Mr. Lenon having another  
24 chance to respond. But I just want to address a few items  
25 that Mr. Lenon mentioned.

1           He said that the Court cannot decide whether  
2 plaintiffs' harassment is reasonable as a matter of law.  
3 And in our joint reply at 14, we outline cases for the  
4 Court where under similar statutes, the civil stalking  
5 statute and the harassment statute, Courts look to whether  
6 the apprehension or fear -- the subjective apprehension or  
7 fear is reasonable as a matter of law consistently.

8           And whether -- and what their -- what the Court  
9 is looking at is whether the apprehension or fear is  
10 objectively reasonable.

11           And under the Elliott versus Strobe case 307 Or.  
12 App. 156 at 161, for example, there are many, many cases  
13 on this, that this is just one example, the Court held  
14 that the subject -- or the conduct would not cause a  
15 reasonable person in the petitioner's situation to be  
16 apprehensive or afraid.

17           So, absolutely this -- it is this Court's job to  
18 look at whether the subjective apprehension or fear that  
19 is alleged by the plaintiffs if objectively reasonable,  
20 and it considers the specific circumstances that the  
21 plaintiffs are in. And so I just wanted to point that  
22 out.

23           And then plaintiffs also -- or plaintiffs'  
24 counsel also stated that, you know, the disclosure does  
25 not need to be secret or the information does not need to

1 be secret.

2 But House Bill 3047 specifically requires that  
3 the defendant knew or reasonably should have known that  
4 the plaintiff did not consent to the disclosure.

5 And so there is some intent from the legislature  
6 here that the information -- that the plaintiffs took some  
7 effort to, you know, keep this information private or not  
8 consent to its disclosure.

9 And here, in every case, the directors disclosed  
10 the information themselves. They did -- they took no  
11 steps to keep this information private. And so they're  
12 lacking in proof on the consent aspect of this statute.

13 And then, you know, plaintiffs' counsel said  
14 that the Court is not to consider the First Amendment or  
15 the constitutional affirmative defenses of defendants on  
16 the prong two aspect. And we cite in our brief the Wilcox  
17 case. This is an anti-SLAPP California case, which Oregon  
18 looks to those cases for guidance. It's 27 Cal. App. 4th  
19 at 824. And that case states that the Court is to  
20 consider constitutional defenses as part of whether  
21 plaintiffs can meet their burden on prong two. And that's  
22 all I have to point out.

23 Oh, just a few more things. As to specifically  
24 defendant Tofte, looking at plaintiffs' argument regarding  
25 Tofte's post, plaintiffs want to present evidence of

1 Tofte's intent by relying on other person's posts within  
2 NEED.

3           And plaintiffs cannot attribute intent to  
4 defendant Tofte by what others said in the NEED posts.  
5 Tofte's intent must be proven by Tofte's conduct and  
6 Tofte's statements alone, not what others said in the NEED  
7 group.

8           And, so, Tofte does not have to disavow what  
9 others say, and her silence cannot show intent.

10           And, finally, harassment under the anti-doxing  
11 statute is a high standard. It is severe emotional stress  
12 such that the individual experiences anxiety, fear,  
13 torment, or apprehension.

14           So simply wanting to perhaps boycott an employer  
15 and tell that employer why you're boycotting them does not  
16 show an intent to cause severe emotional distress such  
17 that the individual experiences anxiety, fear, torment, or  
18 apprehension.

19           And to be clear, we're not conceding that  
20 defendant Tofte wanted to boycott the employer or contact  
21 the employer. But in the context of this NEED post, even  
22 if, you know, plaintiffs were able to present that  
23 evidence, that still does not rise to that level of intent  
24 to harass. And that's all I have.

25           Thank you.



1 THE COURT: Okay. Any other defense attorneys  
2 want to be heard?

3 MR. ACHARYA: That's a very --

4 MX. PECK: Yes, Your Honor. This is Rian Peck.  
5 Just to make a couple of brief comments in response to  
6 Mr. Lenon. And, of course, happy to have Mr. Lenon have  
7 the final word on this.

8 But Mr. Lenon encouraged the Court to look  
9 specifically at the statements that our clients made on  
10 Facebook, and he read accurately the post that Ms. Schwanz  
11 made in which she said, "If you know of students who have  
12 been coached by chair Brown, please encourage them to  
13 share their stories or concerns."

14 So there was a statement that Mr. Lenon made in  
15 which he said that Ms. Schwanz was encouraging people in  
16 the NEED group generally to contact the Canby athletic  
17 director. And that's not quite accurate, because her  
18 encouragement was tailored to students who have had direct  
19 experience with Mr. Brown to share their experiences.

20 And she was doing that in the context of seeing  
21 comments from another student. Now -- or a former student  
22 of Mr. Brown. And we cite these comments not to prove the  
23 truth or veracity of the comments, but simply to inform  
24 the Court about Ms. Schwanz's intent when she was posting.  
25 And it is on page 5 of Ms. Schwanz's special motion to

1 strike under the anti-SLAPP statute, as well as paragraph  
2 14 of Exhibit 5 of her declaration.

3           And she made this post, this specific post,  
4 encouraging students to contact the Canby athletic  
5 director after reading tweets from a student, and I will  
6 just offer some clips that have colorful language. But  
7 the former student said that Mr. Brown "had us throwing  
8 basketballs at each other in a varsity practice and called  
9 that shit Chinese prison dodge ball."

10           And then the student said, "Not to mention the  
11 time he came up to me and another one of his tennis  
12 players during his time as a school security guard. He  
13 got a call about someone acting up, didn't know who it  
14 was, so he joked to us that it was probably a Mexican  
15 kid."

16           And then, "Or the time he chuckled after his  
17 assistant coach said, 'We've got a bunch of faggots on  
18 this team,' in front of one of the few openly gay kids at  
19 the school in a conservative town."

20           So those are the kinds of comments that  
21 Ms. Schwanz had in mind, and the Court can look at the  
22 context in which the post was made to understand Ms.  
23 Schwanz's intent.

24           And then the other point that I wanted to make  
25 was that Mr. Lenon referred to an e-mail that Ms. Schwanz

1 sent to the Canby athletic director months before the post  
2 at issue in this case, in which Mr. Lenon recognized is  
3 not an actionable e-mail.

4 But, again, the Court can look to that e-mail to  
5 understand Ms. Schwanz's intent here. And the intent in  
6 that e-mail is clear, whenever she said that Mr. Brown's  
7 public statements violated the TPSC, which is the Teacher  
8 Professionalism Standards Commission. She said that his  
9 comments violated those standards. So she is thinking  
10 about student safety here. It's all over the place with  
11 respect to the context of the comments that she made.

12 And then I believe the last thing that counsel -  
13 - Mr. Lenon pointed to was an e-mail Ms. Mock, which is  
14 also in response to the subpoena. It's at page 11 of  
15 Canby School District's production. And I just want to  
16 highlight to the Court that Ms. Mock said that the  
17 regressive policy that Mr. Brown voted for will prevent  
18 faculty and staff from conveying to marginalized students  
19 that Newberg schools are a safe place for them to learn.

20 So student safety is all over the place. And  
21 even just on the face of the Facebook post, it is clear  
22 that that is what Ms. Schwanz was focused on whenever she  
23 made her comments. And that is also clear by the fact  
24 that Ms. Schwanz never contacted the Canby athletic  
25 director after she made her post in August.

1           So thank you, Your Honor. That's all that I  
2 have for Ms. Schwanz.

3           THE COURT: Okay. One more.

4           MR. ACHARYA: Thank you, Your Honor. Athul  
5 Acharya for defendants.

6           I just want to very briefly touch on the  
7 constitutional issues at the bottom of the backstop of all  
8 this. Plaintiffs rest very heavily on the intent element  
9 of HB 3047 as shielding it from the First Amendment. They  
10 say that because HB 3047 requires this intent to harass,  
11 that means that the First Amendment doesn't touch it.

12           Now, it's true for these state torts involving  
13 disclosure -- or involving speech, intent is often an  
14 important part of the First Amendment analysis. Usually  
15 the requisite intent is intentional or reckless falsehoods  
16 about the person. Now, that's obviously not the case  
17 here. None of the plaintiffs dispute that this  
18 information was true. So the standard First Amendment  
19 intent analysis doesn't really apply here.

20           But more than that, while saying that the intent  
21 element is this shield that pushes the First Amendment  
22 away from the statute, at the same time under plaintiffs'  
23 construction, it's a very malleable intent element.  
24 Plaintiffs say that because defendants posted this contact  
25 information and urged people to contact the employers,

1 they intended, under the statute, that the plaintiffs be  
2 harassed.

3           And there's an obvious disconnect there. The  
4 person being contacted is the employer, and the person  
5 supposedly being harassed, or that the defendant  
6 supposedly had an intent to harass is a different person.  
7 And plaintiff say that merely by showing the one, you can  
8 prove the other.

9           And if that's so, this is a very, very broad  
10 intent element. It's certainly much broader than any of  
11 the kinds of intent that were struck down in states like  
12 New York Times versus Sullivan -- I'm sorry -- in cases  
13 like New York Times versus Sullivan, where the Supreme  
14 Court said that you have to have a much higher bar for  
15 intent if you want to shield your state torts from  
16 constitutional scrutiny.

17           So for that reason, if the statute could be read  
18 to apply to plaintiffs' conduct -- and, again, plaintiffs'  
19 conduct is inviting corporations who, you know, for better  
20 or for worse the Supreme Court has said they have First  
21 Amendment rights as well, inviting corporations to, you  
22 know, enter the political debate that their own  
23 constituents start using their names. They will state  
24 that's enough to invoke the statute. If so, then as  
25 applied, the statute is unconstitutional.

1 THE COURT: Okay. Mr. Lenon, you get the last  
2 word.

3 MR. LENON: Thank you, Your Honor. And I'd like  
4 to thank all my colleagues for indulging me one last time.  
5 I'm sure we're all anxious to conclude this, so I'm going  
6 to be brief.

7 With respect to the response from Tofte about  
8 the Court's ability to evaluate distress on a reasonable  
9 standard, that's totally fine. That's a different element  
10 of the claim. There are two elements of the anti-doxing  
11 cause of action at issue here.

12 Sub (c) is that the plaintiff is stalked,  
13 harassed, or injured. That is the subjective element.  
14 That's what I was referring to with respect to the  
15 plaintiffs' burden to -- plaintiffs' burden of production  
16 to meet that element.

17 The reasonableness, the objective standard, is  
18 the reasonable person standard in sub (d), that a  
19 reasonable person would have been stalked, harassed, or  
20 injured by the disclosure.

21 And, again, I think we -- the Court can look at  
22 the contexts of the posts that are made, and as long as  
23 there is the minimum amount of evidence that would allow a  
24 jury to infer that intent, then that's sufficient to meet  
25 our burden.

1           So if a reasonable person would have been  
2 stalked -- sorry. I -- forgive me, not intent --.

3           But if a reasonable person would have stalked,  
4 harassed, or injured -- and in this case, we're dealing  
5 with harassment -- and then all the plaintiff needs to do  
6 at this stage is present the minimum amount of evidence  
7 that regardless of what the defendants present -- because,  
8 again, the Court is not weighing the evidence against  
9 itself at this stage, in a vacuum if the plaintiff  
10 presents a minimum amount of evidence that would enable a  
11 jury to infer that there was objective harassment, then  
12 that's all that needs to be done.

13           That's also true on the next point to intent,  
14 that, again, the plaintiffs' burden here is a minimum  
15 amount of evidence, in a vacuum, for a jury to infer that  
16 there was intent.

17           The counsel for Tofte rightly pointed out that  
18 her intent needs to be evaluated on her conduct, but that  
19 also includes omissions. I don't think that it's fair to  
20 say that her lack of follow-up is irrelevant.

21           So in a conversation about whether the members  
22 of that group, at least one of them, felt that this would  
23 be something that would be harassing, that a reasonable  
24 person would feel harassed by, and she says not nothing,  
25 but "good job" to the person who defended her position

1 that this was okay, that, I think, is enough evidence at  
2 this stage to overcome the plaintiffs' burden.

3 With respect to defendant Schwanz, whether or  
4 not the post was encouraging NEED group members to contact  
5 the employer or anyone else isn't really dispositive. The  
6 point is, was the disclosure made and was it made with the  
7 intent to harass.

8 And if she was encouraging people, anyone, to  
9 contact the employer with negative feedback about their  
10 employee, then that is enough information -- that is  
11 enough evidence that jury could infer intent, and that a  
12 jury could infer that a reasonable person would, in fact,  
13 be harassed by that.

14 The e-mail from -- her January e-mail, I just  
15 brought that up to point out that, you know, she  
16 didn't -- she has, in fact, contacted this plaintiff's  
17 employer. Whether or not it falls under the anti-doxing  
18 statute isn't really the relevant inquiry. It's whether  
19 or not her course of conduct taken as a whole, especially  
20 the statements that are subject to the anti-doxing  
21 statute, that were made after its effective date, all of  
22 that can be considered as intent.

23 And, again, the statements on the actual page  
24 don't imply a safety issue. They imply that she wants  
25 people to -- they don't even imply. They flat out ask



1 people to contact the employee, giving very specific  
2 contact information, to express their concerns.

3           With respect to this constitutional backstop,  
4 yes, intent is the backstop to the constitutional  
5 violation. It's the intent to injure. They have defined  
6 it as a bodily injury or harassment, a mental or emotional  
7 distress injury, or a stalking injury.

8           That intent -- the legislature was aware of the  
9 Constitution. The legislature was aware of these  
10 prohibitions on the restriction on free speech. And  
11 they've narrowly tailored this law to cover very specific  
12 types of disclosures and very -- very specific types of  
13 intent.

14           And so if the statute doesn't apply to  
15 these -- to this case, then it's hard to see how it  
16 applies at all.

17           And certainly perhaps that's the defendants'  
18 ultimate argument, is that the statute as a whole is  
19 unconstitutional. But certainly, given what it states on  
20 its face, the elements it lays out for the cause of  
21 action, the plaintiffs have met their burden at this early  
22 stage at least to move forwards.

23           And then one last thing about the disclosure  
24 element that was brought up by Ms. Payne, I believe.  
25 The -- that the consent -- the consent prong of the

1 element goes to help inform what a disclosure means, that  
2 if it wasn't information that was private, then you can  
3 imply -- there is implied consent.

4           This is not what the legislature wrote. And  
5 aside from one use of the word "private information" in  
6 section 2 of the statute, the statute uniformly describes  
7 the disclosures as being personal information, not private  
8 information.

9           And, again, I think that helps read the statute  
10 what the legislature's intent in defining the term  
11 "disclose," that they did include privacy anywhere in the  
12 definition of disclose, and that nearly uniformly they  
13 refer to the categories of information as personal  
14 information.

15           A defendant, with the intent to stalk, harass,  
16 or injure, knowingly caused personal information to be  
17 disclosed. Not necessarily private information, but  
18 personal information as defined by the statute.

19           I think that's the proper way to read the  
20 legislative intent here. The plain language of the  
21 statute is clear. There's no reason to refer to outside  
22 definitions of terms for the terms that the legislature  
23 has applied. And with that, I will conclude.

24           THE COURT: Okay. So I've got three -- almost  
25 three hours' worth of argument to digest. I'm going to do

1 that. I suspect that I may -- as I'm digesting it and  
2 starting to walk through the analysis, I may want some  
3 limited additional briefing from the parties. If I get to  
4 the point that I think that's going to be necessary, I'll  
5 let the parties know. So don't be surprised if you get an  
6 e-mail or a letter from me asking for some additional  
7 briefing.

8 But at this point, I appreciate the time and  
9 energy everyone put into the briefing, into the argument,  
10 and I promise I'm going to a good amount of time to take  
11 it all in and digest it. And I'll let you know what I  
12 decided.

13 Thank you, all for your time.

14 MS. SIMON: Your Honor?

15 THE COURT: Yes.

16 MS. SIMON: Your Honor, can we just deal with  
17 one other matter, which is defendants have put on evidence  
18 that there be -- their speech is being chilled by this  
19 TRO. And it would helpful to make a clear statement that  
20 based on all of the procedural and substantial errors that  
21 we pointed out in our memo to the Court, that the TRO is  
22 no longer operative.

23 THE COURT: I was looking for the TRO. Who  
24 granted that, and what day was it granted?

25 MR. LENON: It was --

1 be in a position where we're beyond the anti-SLAPP phase  
2 of this case.

3 THE COURT: Okay.

4 MS. SIMON: But I agree that logically the  
5 anti-SLAPP should come first and could be dispositive.

6 THE COURT: Okay. All right. Great. Thank  
7 you, everybody. Have a great day.

8 MS. SIMON: Thank you.

9 MR. DAVIDSON: Thank you, Your Honor.

10 (Proceedings concluded at 12:32 p.m.)

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## DECLARATION OF TRANSCRIBER

(Revised)

I, Robyn M. Anderson, hereby certify that:

- a. I am an Official Transcriber for the State of Oregon;
- b. that I personally transcribed the electronic recording of the proceedings had at the time and place herein before set forth;
- c. that the foregoing transcript totaling 131 pages of audio transcription, including cover pages and index, represent an accurate and complete transcription of the entire record of the proceedings, as requested, to the best of my belief and ability.

WITNESS my hand at Gresham, Oregon this 11th day of April, 2022.



---

Robyn M. Anderson, Transcriber  
robyntype@gmail.com



**THE CIRCUIT COURT OF THE STATE OF OREGON**  
**TWENTY FIFTH JUDICIAL DISTRICT**  
**FOR THE COUNTY OF YAMHILL**

\_Verified Correct Copy of Original 2/3/2022.\_

Jennifer K. Chapman  
 Circuit Court Judge  
 Telephone: (503) 434-7486

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February 3, 2022

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Re: Dehart, et al v. Tofte, et al, 21YAM0001CV

Dear Counsel:

This case came before me in December 2021 on a disputed notice of dismissal (involving plaintiff Powell and defendant Barnett); an undisputed motion to amend the complaint; and several interrelated motions to strike (involving all parties).

Prior to ruling on the matters, the Oregon Court of Appeals issued a decision in Chinese Consolidated Benevolent Association v. Chin, 316 Or. App. 514 (2021).<sup>1</sup> The parties requested permission to submit additional authorities in response to that decision, which I granted.<sup>2</sup> Both parties submitted said authorities on January 18, 2022.

<sup>1</sup> I will refer to this case herein as the "CCBA case."

<sup>2</sup> The parties informed the court of their joint request to submit additional briefing by email. In that request, they did not inform the court which additional issue they wanted to brief.

Having now reviewed the parties' briefing and having fully considered the parties' arguments, I will grant and deny the motions as indicated below.

**PLAINTIFF POWELL and DEFENDANT BARNETT**

The parties dispute whether the court should rule on the pending motions to strike prior to dismissing Plaintiff Renee Powell and Defendant Katherine Barnett from the current case. To understand this dispute, a brief amount of background is necessary.

**Background**

The complaint in this case was filed on October 18, 2021. It was served on Defendant Barnett on October 19, 2021. Barnett quickly retained an attorney, who filed a notice of representation with the court on October 26, 2021. Just two days later —on October 28— Barnett filed her motion to strike. That motion was 92 pages long, in part because it included a memorandum of law and supporting declarations. Within a few days, the other defendants filed their own motions to strike and joined the motion already filed by Barnett.

On November 5, 2021 —just 17 days after filing the complaint; just 10 days after Barnett's attorney formally appeared in the case; and just 8 days after Barnett filed her motion to strike— Plaintiff Powell filed an ORCP 54 Notice of Dismissal as to Defendant Barnett.

For reasons that are unclear on the record, Plaintiff Powell did not immediately submit a limited judgment of dismissal with her ORCP 54 Notice. Instead, Plaintiffs collectively filed a motion for leave to file an amended complaint. The proposed amended complaint removes Powell and Barnett as parties and differentiates the claims made by the remaining plaintiffs against the remaining defendants.

A few days later, on November 10, 2021, Plaintiffs submitted the missing limited judgment and a proposed order on the motion for leave to file an amended complaint. The attached UTCR 5.100 certificates of readiness indicated that none of the opposing attorneys objected to the motion and order to amend, but that the parties had unresolved disputes about the limited judgment. The court did not sign the order or the limited judgment prior to the December motions hearing.

At the beginning of the December motions hearing, the court raised the issue of the amendment and ORCP 54 notice, expecting that those would dispense with the need for further hearing as to Plaintiff Powell and Defendant Barnett. However, Defendant Barnett insisted that —although she did not object to being dismissed from the case— the pending appellate decision in CCBA meant that she should be heard on the motion to strike so that she could make a record for attorney fees and for overall appellate purposes.

Given the need for the hearing on the other defendants' largely overlapping motions, and given that CCBA had not yet been decided, I allowed Barnett to make her desired record.

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Analysis

Plaintiff Powell and Defendant Barnett remained parties to the lawsuit at the time of the December 2021 motions hearing, because the limited judgment had not been signed and the amended complaint had not been filed.

However, given the parties' agreement that Powell and Barnett should no longer be parties to the case, Defendant Barnett's position that the court must both hear and rule on her motion to strike is misplaced.

Advisory opinions are not necessary or appropriate in Oregon. Indeed, the CCBA case cited by Defendant Barnett itself states:

“As a matter of Oregon law, ... voluntary dismissal of a complaint renders the underlying merits of the plaintiff's claims— as well as the underlying merits of a motion attacking those claims— moot. Dismissal means that there are no longer any merits claims or defenses for the court to resolve; doing so would be advisory. And, once an underlying claim becomes moot, a court lacks jurisdiction to resolve its merits solely for the purpose of determining attorney fee entitlement.”

316 Or. App at 521 (citing cases).

Despite this statement of the applicable law, Defendant Barnett argues that the court must rule on her motion to strike for two reasons. First, she argues that she was sued by four plaintiffs and only one has filed an ORCP 54 notice dismissing her. Second, she argues that under the CCBA decision, her right to attorney fees survives if the court concludes that her motion to strike played a role in the dismissal.

Both of Defendant's arguments fail. Regardless of how the original complaint was pled, there is no dispute that the entry of a limited judgment and the filing of an amended complaint would dismiss any and all claims against Defendant Barnett. Indeed, the proposed amended complaint clearly and unambiguously removes Defendant Barnett from the lawsuit.

Meanwhile, there are important procedural distinctions between a ruling on the merits of a claim and a ruling on the entitlement to attorney fees. Whether Defendant Barnett is entitled to attorney fees is not a question that is currently pending before the court. Defendant Barnett may, if she chooses, seek attorney fees after the claims against her are dismissed, using the processes set forth in Oregon law. However, nothing in Oregon law or the CCBA decision requires—or even allows—the court to consider the merits of her motion to strike at this stage in the case.

I will sign Plaintiffs' proposed Limited Judgment and proposed Order On Plaintiff's Motion for Leave to File Amended Complaint.

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**DEFENDANTS TOFTE, BROOKFIELD, & SCHWANZ**

With respect to Defendants Tofte, Brookfield, and Schwanz, the parties largely agree on the legal framework that is to be used to decide the pending motions to strike.<sup>3</sup>

Defendants' motions are based on ORS 31.150 to ORS 31.155, also known as the "anti-SLAPP law." Under the law, motions to strike must be decided using a two-step process.

Under the first step, the court must consider whether the lawsuit involves the types of protected speech outlined in that law. The burden of proving that protected speech is involved belongs to the defendant(s).

If a defendant can prove that protected speech is involved, the burden then shifts to the plaintiff to show that there is a probability of success as to the underlying claim. This must be proven by substantial evidence supporting a prima facie case.

I will address each prong as necessary, below.

**Prong 1: Protected Speech**

The anti-SLAPP law allows defendants to bring special motions to strike if a civil claim is based on at least one category of protected speech outlined in the law. The anti-SLAPP law provides heightened procedural protections for certain types of speech. The law does not confer substantive protections, nor does it purport to cover all types of constitutional speech.

Of the categories of speech entitled to heightened procedural protection under the anti-SLAPP law, only two potentially apply in this case:

- Category (c): "Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest."
- Category (d): "Any other conduct in furtherance of the exercise of constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

See ORS 31.150(2).

In this case, Plaintiffs' lawsuit alleges that the defendants posted the following on Facebook:

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<sup>3</sup> During the hearing and in their briefing, the parties seem to agree that the court should rule on the motions to strike, notwithstanding the anticipated order granting Plaintiff leave to file an amended complaint. This is presumably because the allegations are largely the same in both complaints and are simply organized more distinctly in the amended complaint.

- Defendant Schwanz, re: Plaintiff Brown:

*“Chair Brown is currently employed by the Canby School District as the girls tennis coach. If you know of students who have been coached by Chair Brown, please encourage them to share their stories/ concerns with the Canby Athletic Director: Benjamin Winegar  
Associate Principal/ Athletic Director- Canby High  
(503) 263-2704 ex 5304  
winegarb@canby.k12.or.us”*

- Defendant Tofte, re: Plaintiff DeHart:

*“Key tenets for Lam Research, the employer of Trevor DeHart. This is their dedication to education. Read the last section, ‘Quality of Life’ and you’ll see just in that tidbit how DeHart’s values conflict with his employers.  
<https://www.lamresearch.com/.../envir.../the-lam/foundation/>.”*

- Defendant Brookfield, re: Plaintiff Shannon:

*“+1 (503) 443-1400, please call them and express your concerns about his demonstrated behavior. I’d avoid hearsay.”*

The parties dispute whether any of these posts fit within categories (C) or (D). At the heart of this dispute is whether the posts were made in connection with an issue of public interest (which is required for both category C and category D); whether the posts were made in a public forum or an area open to the public (which is required for category C); and whether the statements were made in furtherance of the exercise of free speech (which is required for category D).

### The Law Generally

I will begin the analysis with the requirement that the communications be made in connection with an issue of public interest, because that is required for both category C and category D. Defendants attempt to make the required showing in two ways. First, they argue the private employment and qualifications of public officials is always a matter of public interest. Second, they argue that any further showing that may be required is satisfied by proving that Plaintiffs made unpopular decisions in their roles as school board members that garnered a large amount of public anger and attention.

I disagree with Defendants on both fronts. While Defendants are correct that the qualifications of a public servant are often matters of public interest, that does not mean that the legislature intended that any and all communications that mention a public servant’s separate employment are automatically protected. Nor does it mean that the legislature intended that all such communications should receive the heightened procedural protections associated with the anti-SLAPP law.

Moreover, the fact that a public servant has made a unpopular decision does not necessarily make any and all information about a public servant—such as the official’s mental health records; the grade-point average of the official’s children; the official’s cancer diagnosis; the official’s unrelated

employment; etc.— matters of public interest subject to the anti-SLAPP law. Rather, I interpret the statute as requiring some connection between the statements and the matters of public concern.

The Oregon Court of Appeals' decision in Mullen v. Meredith Corp., 271 Or. App. 698 (2015) is not inconsistent with this analysis. In Mullen, a correctional officer was interviewed by a television reporter after gunshots were fired in his neighborhood and his house was hit by bullets. He had agreed to the interview on the condition that he not be filmed, in part because he was worried that the disclosure of his address could cause safety issues related to inmates he supervised. The reporter agreed to his conditions, but the plaintiff-officer was ultimately filmed anyway, and a few seconds of that footage was aired.

The correctional officer and his wife filed suit against the television station, which responded with an anti-SLAPP motion to strike. At the hearing, the plaintiffs did not dispute that the shooting in their neighborhood was a matter of public interest. Instead, they argued that the story should have been covered in a different way, and that it was unnecessary and not in the public interest to show the plaintiff-officer or his house.

The Oregon Court of Appeals disagreed with plaintiffs. It concluded that the protected speech analysis does not require an examination about whether disputed speech is necessary to the public's interest or understanding of a story. That the television station could have told the story without showing plaintiffs or their home was irrelevant.

The case at hand is very different than the one in Mullen. Whereas Mullen involved questions about how narrowly the term "public interest" should be defined, this case involves questions about how broadly the concept should be applied. Similarly, whereas Mullen involved questions about whether the court should separately consider facts that were clearly interwoven —*e.g.*, the shooting; the location where the shooting occurred; and the identity of the homeowners whose home was struck with bullets— this case involves questions about whether the court should consider facts and factors that can be easily divorced from one another.

More problematic, under the Defendants' interpretation, any information that could embarrass or motivate a public official to change his/her position would become a matter of public concern each time a public official makes a controversial decision or is otherwise involved in a public dispute.<sup>4</sup> This interpretation of the law is not only inconsistent with the comparable California decisions that have been cited, but it is also inconsistent with the public policy expressed by the Oregon legislature when it adopted the doxxing statute.<sup>5</sup>

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<sup>4</sup> Similarly, under Defendants' interpretation, the names, identities, and other personal information of a candidate's family and children could be deemed "matters of public interest" simply because a candidate identifies as a parent or poses for a picture with their family, even if such references or photographs are passing, minor elements of a campaign. In addition, passing, largely innocuous comments about the stress of a campaign or daily life could be said to open the door to public disclosure of personal mental health records.

<sup>5</sup> The Oregon legislature is very aware of, and concerned about, the doxxing of public officials.

In today's polarized society, almost everything that public servants do can subject them to intense criticism. Interpreting the statute as I do here acknowledges that the legislature has decided that there should be heightened procedural protections in place for public criticism that focuses on the work and decisions made by government officials.

Having determined that there must be at least some nexus between the disputed communications and the public interest, I will now consider the case involving each plaintiff/ defendant pair.

### Defendants Tofte and Brookfield

In this case, Defendants Tofte and Brookfield posted about the employers of DeHart and Shannon. Both Shannon and Dehart are (or were) employed by private entities, and it is unclear from the record why such employment or the values of those private entities would be a matter of public interest.<sup>6</sup>

Admittedly, the posts by Defendants Tofte and Brookfield were motivated by the public dispute with the school board. However, unlike in the Mullen case, Defendants' posts can be easily divorced from that public dispute: neither defendant was questioning the technical qualifications of Plaintiffs DeHart and Brown to serve on the school board; the record does not indicate that Defendants' posts contributed to a conversation about whether DeHart and Brown were technically qualified for their public positions; and the posts do not suggest that DeHart and Brown's employment influenced the controversial decisions they made. Instead, it appears that Defendants' posts were for the purpose of furthering a conversation about how to "hold them accountable" for their decisions.

There are many situations in which the private employment of a public servant can be deemed a matter of public interest. Unfortunately, on this record, Defendants Tofte and Brookfield have failed to establish that nexus here, and they have thus failed to meet Prong 1 of the analysis.

The motions to strike filed by Defendants Tofte and Brookfield are denied.

### Defendant Schwanz

The analysis involving Defendant Schwanz and Plaintiff Brown is different than that of the other parties. Unlike DeHart and Shannon, Brown is (or was) employed by a public school as a coach. Meanwhile, Defendant Schwanz' post was looking for students to share stories and experiences about having worked with Chair Brown in that capacity. The post's connection to public school and to public school students clearly implicates matters of public interest.

Of course, posting on a matter involving public interest is not enough. Defendant Schwanz must also show that she made the post in a public forum or in a place open to the public (as required to

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Interpreting the statute the way suggested by Defendants, in contrast, would extend those heightened procedural protections to actions that the legislature's doxxing law expressly and implicitly indicates that the legislature did not want to protect —e.g., situations in which public servants' children, families, and unrelated personal lives or separate, unrelated employment are attacked or used as a way to pressure and bully public servants.

<sup>6</sup> The record indicates that Plaintiff Shannon is/was employed as a project manager for a software/ tech company in Portland, and that Plaintiff DeHart is/was employed as a "semiconductors professional" or "manufacturing engineer" at a company called, "Lam Research."

Little other information about Plaintiff Shannon or Plaintiff DeHart's employment is available in the record, including whether the employers contributed money to Plaintiffs' campaigns; whether the employers had any significant connections to Newberg; or whether the employer-businesses themselves had been active politically.

fall within category C), or that her post was in furtherance of constitutional speech (as required to fall within category D).

Ultimately, having considered the post and the surrounding context, I conclude that Defendant Schwanz's post clearly involves conduct in the furtherance of protected speech. That is sufficient to make the speech protected under category (D), making it unnecessary to also determine whether the speech is protected under category (C).

**Prong 2: Prima Facie Case (as to Defendant Schwanz only)**

Having found that the post by Defendant Schwanz is protected speech, I must now consider whether Plaintiff Brown has established, via substantial evidence, that he has a prima facie case.

Plaintiff Brown alleges that Defendant Schwanz violated HB 3047 by knowingly disclosing the contact information for Plaintiff Brown's boss, which led to Plaintiff Brown being stalked, harassed, or injured.

On this record, Plaintiff Brown has established that Defendant Schwanz made a post that contained detailed contact information for Plaintiff Brown's boss. Plaintiff Brown has also established a prima facie case that he suffered damages as a result of that disclosure.

Defendant Schwanz's primary defense is that she did not "disclose" anything because the information she posted was already public. As Plaintiffs point out, this argument incorrectly conflates the terms "personal" and "private." HB 3047 defines "personal information" as including the contact information for one's employer. Nothing in HB 3047 states that the protections of the law are only available if the personal information is private or unavailable to others.<sup>7</sup> Similarly, nothing in HB 3047 limits actionable disclosures to the first person or incident in which information is posted, revealed, or published.

That having been said, Defendant Schwanz is correct that Plaintiff Brown disclosed where he worked during his campaign for school board, and that this disclosure makes it difficult for Plaintiff Brown to prove that Defendant Schwanz knew or should have known that Plaintiff Brown did not consent to the disclosure. *However*, Defendant Brown is not suing Defendant Schwanz merely because she disclosed the name of his employer. Defendant Brown is suing Defendant Schwanz because she went a step further: she researched, identified, and then disclosed details about who Brown's boss was and how to reach that individual. On this record, a factfinder could reasonably conclude that Defendant Schwanz knew or should have known that Plaintiff Brown did not consent to that information being disclosed.

In sum, on this record, the case against Defendant Schwanz survives the special motion to strike.

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<sup>7</sup> A sophisticated (or even unsophisticated) sleuth can discover almost anything about anyone on the internet in today's internet age. This is likely why the legislature opted to define the scope of the doxxing statute in terms of "personal" not "private" information.

Unfortunately, the legislature decided to name the tort it was creating "improper disclosure of *private* information" and then define the elements of that tort as the disclosure of "*personal*" information. This drafting issue is likely why Defendants are confused about whether "personal" or "private" information is necessary.

**CONSTITUTIONALITY OF HB 3047**

Some of the parties' briefing and argument touches on the overall constitutionality of HB 3047.

I have some questions about the overall constitutionality of HB 3047, both as applied and generally. These questions are amplified in the context of Defendant Schwanz, whose alleged doxxing involved the posting of official contact information for a public official. Nevertheless, for purposes of the special motions to strike, I have presumed —without deciding— the constitutionality of HB 3047. This is for three reasons.

First, the constitutionality of HB 3047 has been partially, but not fully fleshed out in the record. The constitutionality of the law was primarily argued in an attempt to bolster the parties' proposed statutory interpretations, as opposed to an attempt to really dispute and challenge the limits of the law.<sup>8</sup>

Second, I have outstanding questions about whether notice and an opportunity to be heard must be provided to the Oregon Attorney General before the constitutionality of HB 3047 can be decided.

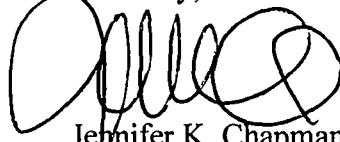
Third, in my view, a special motion to strike is not the procedural vehicle to raise and decide a constitutional challenge.

I considered asking the parties for additional briefing to address all three of these concerns, but given the rest of the analysis, I ultimately declined to do so.

**NEXT STEPS**

For the reasons discussed above, the special motions to strike are denied. I ask that Mr. Thennell prepare and submit a proposed order/ limited judgment within the next 30 days.

Sincerely,



Jennifer K. Chapman  
Circuit Court Judge

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<sup>8</sup> Had there been two plausible interpretations of HB 3047 —one constitutional and one not— the Defendants' arguments that I should choose the constitutional interpretation would carry significant weight. However, in this case, Defendants' proffered interpretations would require me interpret the anti-doxxing law in a way that appears inconsistent with its plain language and legislative intent.

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL

TREVOR DEHART, RENEE POWELL,  
BRIAN SHANNON and DAVE BROWN,

Plaintiffs,

vs.

DEBBIE TOFTE, KATHERINE BARNETT,  
AJ SCHWANZ, and TAMARA  
BROOKFIELD,

Defendants.

Case No. 21YAM0001CV

LIMITED JUDGMENT

The court issued an Order on February 3, 2022, addressing all four Defendants' special motions to strike and dismiss (Anti-SLAPP). The Court denied the motions and now issues this limited judgment pursuant to ORS 31.150(1).

IT IS HEREBY ADJUDGED:

1. Defendant BARNETT's special motion to strike is DENIED as moot;
2. Defendant TOFTE's special motion to strike is DENIED;
3. Defendant BROOKFELD's special motion to strike is DENIED;

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1 4. Defendant SCHWANZ's special motion to strike is DENIED.  
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7 Circuit Court Judge Jennifer K. Chapman  
8  
9

10  
11 DATED: February 10, 2022

12 SUBMITTED BY:

13 THENELL LAW GROUP P.C.

14 By: /s/ Daniel E. Thenell

15 Daniel E. Thenell, OSB No. 971655

16 Email: [Dan@ThenellLawGroup.com](mailto:Dan@ThenellLawGroup.com)

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*Of Attorneys for Plaintiffs*  
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**REGISTER OF ACTIONS**  
[CASE NO. 21YAM0001CV](#)

**Trevor Dehart, Brian Shannon, Dave Brown vs Debbie Tofte, Katherine Barnett, AJ Schwanz, Tamara Brookfield**

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Case Type: **Injunctive Relief**  
Date Filed: **10/18/2021**  
Location: **Yamhill**  
Court of Appeals: **A177995**

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**PARTY INFORMATION**

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|                  |                           |   |
|------------------|---------------------------|---|
| <b>Defendant</b> | <b>Brookfield, Tamara</b> | <p><b>Attorneys</b><br/> <b>Athul K Acharya</b><br/> <i>Retained</i><br/> 503 383-9492(W)</p> <p>Kelly Kathryn Simon<br/> <i>Retained</i><br/> 503 444-7015(W)</p> <p>Rian Peck<br/> <i>Retained</i><br/> 503 907-9090(W)</p> <p>SHENOA L PAYNE<br/> <i>Retained</i><br/> 503 914-2500(W)</p> |
| <b>Defendant</b> | <b>Schwanz, AJ</b>        | <p><b>Rian Peck</b><br/> <i>Retained</i><br/> 503 907-9090(W)</p> <p>Athul K Acharya<br/> <i>Retained</i><br/> 503 383-9492(W)</p> <p>Kelly Kathryn Simon<br/> <i>Retained</i><br/> 503 444-7015(W)</p> <p>SHENOA L PAYNE<br/> <i>Retained</i><br/> 503 914-2500(W)</p>                       |
| <b>Defendant</b> | <b>Tofte, Debbie</b>      | <p><b>SHENOA L PAYNE</b><br/> <i>Retained</i><br/> 503 914-2500(W)</p> <p>Athul K Acharya<br/> <i>Retained</i><br/> 503 383-9492(W)</p> <p>Kelly Kathryn Simon<br/> <i>Retained</i><br/> 503 444-7015(W)</p> <p>Rian Peck<br/> <i>Retained</i><br/> 503 907-9090(W)</p>                       |

|                  |                       |   |
|------------------|-----------------------|---|
| <b>Plaintiff</b> | <b>Brown, Dave</b>    | <b>DANIEL E THENELL</b><br><i>Retained</i><br>503 372-6450(W) |
|                  |                       | Emerson Lenon<br><i>Retained</i><br>503 372-6450(W)           |
|                  |                       | Paige Chrz<br><i>Retained</i>                                 |
| <b>Plaintiff</b> | <b>Dehart, Trevor</b> | <b>DANIEL E THENELL</b><br><i>Retained</i><br>503 372-6450(W) |
|                  |                       | Emerson Lenon<br><i>Retained</i><br>503 372-6450(W)           |
| <b>Plaintiff</b> | <b>Shannon, Brian</b> | <b>DANIEL E THENELL</b><br><i>Retained</i><br>503 372-6450(W) |
|                  |                       | Emerson Lenon<br><i>Retained</i><br>503 372-6450(W)           |

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**EVENTS & ORDERS OF THE COURT**

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**DISPOSITIONS**

- 02/03/2022 **Judgment - Limited Dismissal** (Judicial Officer: Easterday, Cynthia L)  
Party(Powell, Renee; Barnett, Katherine)  
Created: 02/03/2022 3:02 PM
- 02/11/2022 **Judgment - Limited** (Judicial Officer: Chapman, Jennifer)  
Created: 02/11/2022 4:26 PM

**OTHER EVENTS AND HEARINGS**

- 10/18/2021 **[Complaint](#)**  
*Declaratory Judgment- Not Subject to Arbitration*  
Created: 10/18/2021 3:13 PM
- 10/18/2021 **Service**

|                    |          |            |
|--------------------|----------|------------|
| Tofte, Debbie      | Served   | 10/19/2021 |
|                    | Returned | 10/21/2021 |
| Barnett, Katherine | Served   | 10/19/2021 |
|                    | Returned | 10/21/2021 |
| Schwanz, AJ        | Served   | 10/18/2021 |
|                    | Returned | 10/19/2021 |
| Brookfield, Tamara | Served   | 10/19/2021 |
|                    | Returned | 10/21/2021 |

Created: 10/18/2021 3:13 PM
- 10/18/2021 **[Motion - Restraining Order](#)**  
Created: 10/18/2021 3:28 PM
- 10/18/2021 **[Hearing](#)** (10:00 AM) (Judicial Officer Nelson, Philip L)  
Result: Held  
Created: 10/18/2021 4:09 PM
- 10/18/2021 **[Order - Show Cause](#)** (Judicial Officer: Nelson, Philip L )  
*And Temporary Restraining Order*  
Signed: 10/18/2021  
Created: 10/18/2021 4:14 PM
- 10/18/2021 **[Record - Proceedings](#)**  
*Paige Chrz certified law student for plaintiffs. Ms. Chrz will contact docketing for a 1 hour preliminary injunction hearing to be set.*  
Created: 10/18/2021 4:14 PM
- 10/19/2021 **[Proof - Service](#)**  
Created: 10/19/2021 3:11 PM
- 10/21/2021 **[Proof - Service](#)**  
Created: 10/21/2021 1:55 PM

10/21/2021 [Summons](#)  
Created: 10/21/2021 1:55 PM

10/21/2021 [Proof - Service](#)  
Created: 10/21/2021 1:55 PM

10/21/2021 [Summons](#)  
Created: 10/21/2021 1:55 PM

10/21/2021 [Proof - Service](#)  
Created: 10/21/2021 1:55 PM

10/21/2021 [Summons](#)  
Created: 10/21/2021 1:55 PM

10/26/2021 [Notice - Representation](#)  
Created: 10/26/2021 10:33 AM

10/26/2021 [Notice - Representation](#)  
Created: 10/26/2021 10:33 AM

10/26/2021 [Notice - Representation](#)  
Created: 10/26/2021 2:03 PM

10/26/2021 [Notice - Representation](#)  
Created: 10/26/2021 2:10 PM

10/26/2021 [Notice - Representation](#)  
Created: 10/26/2021 2:13 PM

10/26/2021 [Notice - Representation](#)  
Created: 10/26/2021 3:43 PM

10/28/2021 [Motion - Strike](#)  
Created: 10/28/2021 3:23 PM

11/01/2021 [Motion - Continuance](#)  
Created: 11/01/2021 2:07 PM

11/01/2021 [Motion - Strike](#)  
*Joinder in Motion to Strike Filed by Katherine Barnett*  
Created: 11/01/2021 4:07 PM

11/01/2021 [Motion - Strike](#)  
*Joinder in Motion to Strike Filed by Katherine Barnett*  
Created: 11/01/2021 4:28 PM

11/02/2021 **CANCELED Hearing - Motion** (2:30 PM) (Judicial Officer Wiles, Ladd)  
*Continued*  
*Temp Restraining Order/Preliminary Injunction - WebEx invites sent*  
Created: 10/19/2021 8:58 AM

11/02/2021 [Motion - Strike](#)  
*Joinder in Motion to Strike Filed by Katherine Barnett*  
Created: 11/02/2021 3:16 PM

11/02/2021 [Order - Continue](#) (Judicial Officer: Wiles, Ladd )  
Signed: 11/02/2021  
Created: 11/02/2021 3:57 PM

11/05/2021 [Notice - Dismissal](#)  
Created: 11/05/2021 4:30 PM

11/05/2021 [Motion - File Amended Complaint](#)  
Created: 11/08/2021 8:09 AM

11/11/2021 [Declaration](#)  
Created: 11/12/2021 4:27 PM

11/12/2021 [Declaration](#)  
Created: 11/12/2021 4:28 PM

11/15/2021 [Response](#)  
*To Defendants' Motions to Strike and Dismiss Complaint*  
Created: 11/15/2021 3:35 PM

11/15/2021 [Declaration](#)  
Created: 11/15/2021 3:37 PM

11/17/2021 [Proof - Service](#)  
*of Subpoena Duce Tecum To Selectron*  
Created: 11/17/2021 4:31 PM

11/17/2021 [Proof - Service](#)  
*of Subpoena Duces Tecum to Canby High School*  
Created: 11/17/2021 4:31 PM

11/18/2021 [Proof - Service](#)  
*of Subpoena Duces Tecum to Lam Research/Security*  
Created: 11/18/2021 11:55 AM

11/23/2021 [Notice - Representation](#)  
Created: 11/23/2021 11:31 AM

11/23/2021 [Notice - Representation](#)  
*Amended*  
Created: 11/23/2021 1:39 PM

11/24/2021 [Proof - Service](#)  
*Subpoena Duces Tecum To Lam Research/CT Corporation*  
Created: 11/24/2021 2:22 PM

11/26/2021 [Reply](#)  
*In Support of Special Motion to Strike*  
Created: 11/26/2021 3:38 PM

11/26/2021 [Reply](#)  
*In Support of Defendant Katherine Barnett's Special Motion to Strike*  
Created: 11/26/2021 4:00 PM

11/26/2021 [Declaration](#)  
*Supplemental Declaration of Clifford S. Davidson*  
 Created: 11/26/2021 4:00 PM

11/29/2021 [Response](#)  
*Defendants Toft, Schwanz, and Brookfield's Joint Response to Order to Show Cause Why a Preliminary Injunction Should Not Enter*  
 Created: 11/30/2021 8:16 AM

12/01/2021 [Hearing - Motion](#) (9:30 AM) (Judicial Officer Chapman, Jennifer)  
*Temp Restraining Order/Preliminary Injunction, Defs Motions to strike, Motion for Dismissal & Motion to amend complaint -WebEx invites sent to parties in case only others to appear on line 241, - Reset from 11/2/21 \*\*\* Note change in time*  
*12/01/2021 Reset by Court to 12/01/2021*  
 Result: Held  
 Created: 11/02/2021 1:13 PM

12/01/2021 [Record - Proceedings](#)  
*JKC takes Slap Motions under advisement. TRO allowed to expire today.*  
 Created: 12/01/2021 12:27 PM

12/01/2021 **Pending - Under Advisement** (Judicial Officer: Chapman, Jennifer )  
*Slap Motions*  
 Created: 12/01/2021 12:27 PM

01/07/2022 [Additional Authorities](#)  
*Notice of Supplemental Authority*  
 Created: 01/07/2022 1:31 PM

01/18/2022 [Additional Authorities](#)  
*Supplemental Briefing in Support of Response to Defendants' Motions to Strike*  
 Created: 01/19/2022 4:42 PM

01/18/2022 [Additional Authorities](#)  
*Supplemental Brief Addressing Supplemental Authority*  
 Created: 01/19/2022 4:44 PM

02/03/2022 [Opinion - Letter](#) (Judicial Officer: Chapman, Jennifer )  
 Signed: 02/03/2022  
 Created: 02/03/2022 10:07 AM

02/03/2022 [Digitized Judgment Document](#) (Judicial Officer: Chapman, Jennifer )  
 Signed Date: 02/03/2022  
 Created: 02/03/2022 3:00 PM

02/03/2022 **Notice - Judgment Entry**  
 Created: 02/03/2022 3:04 PM

02/03/2022 [Order - Allowing Amended Complaint](#) (Judicial Officer: Chapman, Jennifer )  
 Signed: 02/03/2022  
 Created: 02/03/2022 3:05 PM

02/08/2022 [Complaint - Amended](#)  
 Created: 02/08/2022 10:59 AM

02/10/2022 [Motion - Attorney Fees](#)  
 Created: 02/11/2022 8:14 AM

02/11/2022 [Digitized Judgment Document](#) (Judicial Officer: Chapman, Jennifer )  
*Denied*  
 Signed Date: 02/11/2022  
 Created: 02/11/2022 4:25 PM

02/11/2022 **Notice - Judgment Entry**  
 Created: 02/11/2022 4:26 PM

02/16/2022 [Motion - Time Extension](#)  
 Created: 02/16/2022 1:43 PM

02/18/2022 [Motion](#)  
 Created: 02/18/2022 8:30 AM

02/18/2022 [Order](#) (Judicial Officer: Easterday, Cynthia L )  
*Granting Motion to Extend Time to File ORCP 68 Statement*  
 Signed: 02/18/2022  
 Created: 02/18/2022 4:20 PM

02/23/2022 [Notice - Appeal](#)  
 Created: 02/23/2022 12:22 PM

02/24/2022 [Notice](#)  
*Assigned to Robyn Anderson*  
 Created: 02/24/2022 3:22 PM

02/24/2022 [Motion - Attorney Fees](#)  
 Created: 02/24/2022 4:47 PM

02/28/2022 [Order](#) (Judicial Officer: Collins, John L )  
*To Partially Stay Proceedings*  
 Signed: 02/25/2022  
 Created: 02/28/2022 10:26 AM

02/28/2022 [Order](#) (Judicial Officer: Collins, John L )  
*On Defendants' Motion for Extension of Time*  
 Signed: 02/25/2022  
 Created: 02/28/2022 10:28 AM

02/28/2022 [Notice](#)  
*of Deposit in Lieu of Undertaking for Cost on Appeal*  
 Created: 02/28/2022 10:50 AM

02/28/2022 [Memorandum - Response To Motion](#)  
*In Opposition to Plaintiffs' Petition for Attorney Fees*  
 Created: 02/28/2022 3:06 PM

- 03/11/2022 [Response](#)  
To Motion To Determine Whether Barnett is Entitled to Attorney Fees  
Created: 03/14/2022 8:24 AM
- 03/17/2022 [Reply](#)  
In Support of Motion to Determine Whether She is Entitled to Attorney Fees  
Created: 03/17/2022 3:59 PM
- 03/28/2022 [Certificate](#)  
transcript  
Created: 03/28/2022 9:42 AM
- 04/04/2022 [Motion - Correct Transcript](#)  
Created: 04/04/2022 11:58 AM
- 04/07/2022 [Order - Correct Transcript](#) (Judicial Officer: Easterday, Cynthia L )  
Signed: 04/06/2022  
Created: 04/07/2022 10:32 AM
- 04/14/2022 [Letter](#)  
Re: stay of Barnett's atty fee motion  
Created: 04/15/2022 4:45 PM
- 04/15/2022 CANCELED [Hearing - Motion](#) (3:30 PM) (Judicial Officer Chapman, Jennifer)  
Stipulated by Parties  
for Attorney Fees - Telephonic, \*Correction in time only  
04/15/2022 Reset by Court to 04/15/2022  
Created: 03/15/2022 3:41 PM
- 05/06/2022 [Certificate](#)  
of filing of transcript  
Created: 05/06/2022 1:37 PM
- 05/09/2022 [Notice](#)  
records request - COA. Case file images e-transmitted to COA  
Created: 05/09/2022 1:39 PM
- 05/16/2022 [Certificate](#)  
Created: 05/16/2022 8:24 AM
- 09/23/2022 [Hearing - Status Check](#) (9:30 AM) (Judicial Officer Easterday, Cynthia L)  
Created: 04/15/2022 1:31 PM

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**FINANCIAL INFORMATION**

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|            |  |             |
|------------|--|-------------|
|            | <b>Attorney Davidson, Clifford Scott</b>                               |             |
|            | Total Financial Assessment   | 9.00        |
|            | Total Payments and Credits   | 9.00        |
|            | <b>Balance Due as of 06/06/2022</b>                                    | <b>0.00</b> |
| 11/18/2021 | Transaction Assessment   | 9.00        |
| 11/18/2021 | Phone Payment      Receipt # 2021-722389      Davidson, Clifford Scott | (9.00)      |
|            |  |             |
|            | <b>Defendant Barnett, Katherine</b>                                    |             |
|            | Total Financial Assessment   | 281.00      |
|            | Total Payments and Credits   | 281.00      |
|            | <b>Balance Due as of 06/06/2022</b>                                    | <b>0.00</b> |
| 10/26/2021 | Transaction Assessment   | 281.00      |
| 10/26/2021 | xWeb Accessed eFile      Receipt # 2021-669001      Barnett, Katherine | (281.00)    |
|            |  |             |
|            | <b>Defendant Brookfield, Tamara</b>                                    |             |
|            | Total Financial Assessment   | 281.00      |
|            | Total Payments and Credits   | 281.00      |
|            | <b>Balance Due as of 06/06/2022</b>                                    | <b>0.00</b> |
| 11/02/2021 | Transaction Assessment   | 281.00      |
| 11/02/2021 | Phone Payment      Receipt # 2021-681842      Acharya, Athul K         | (281.00)    |
|            |  |             |
|            | <b>Defendant Schwanz, AJ</b>   |             |
|            | Total Financial Assessment   | 281.00      |
|            | Total Payments and Credits   | 281.00      |
|            | <b>Balance Due as of 06/06/2022</b>                                    | <b>0.00</b> |
| 11/02/2021 | Transaction Assessment   | 281.00      |
| 11/02/2021 | xWeb Accessed eFile      Receipt # 2021-681780      Schwanz, AJ        | (281.00)    |

|            |  |                       |                      |             |
|------------|--|-----------------------|----------------------|-------------|
|            | <b>Defendant</b> Tofte, Debbie                 |                       |                      |             |
|            | Total Financial Assessment                     |                       |                      | 281.00      |
|            | Total Payments and Credits                     |                       |                      | 281.00      |
|            | <b>Balance Due as of 06/06/2022</b>            |                       |                      | <b>0.00</b> |
| 11/01/2021 | Transaction Assessment                         |                       |                      | 281.00      |
| 11/01/2021 | xWeb Accessed eFile                            | Receipt # 2021-679823 | Tofte, Debbie        | (281.00)    |
|            | <b>Plaintiff</b> Dehart, Trevor                |                       |                      |             |
|            | Total Financial Assessment                     |                       |                      | 281.00      |
|            | Total Payments and Credits                     |                       |                      | 281.00      |
|            | <b>Balance Due as of 06/06/2022</b>            |                       |                      | <b>0.00</b> |
| 10/18/2021 | Transaction Assessment                         |                       |                      | 281.00      |
| 10/18/2021 | Counter Payment                                | Receipt # 0019322     | Paige Chrz           | (281.00)    |
|            | <b>Privately Retained</b> Acharya, Athul K     |                       |                      |             |
|            | Total Financial Assessment                     |                       |                      | 2.00        |
|            | Total Payments and Credits                     |                       |                      | 2.00        |
|            | <b>Balance Due as of 06/06/2022</b>            |                       |                      | <b>0.00</b> |
| 11/02/2021 | Transaction Assessment                         |                       |                      | 2.00        |
| 11/02/2021 | Phone Payment                                  | Receipt # 2021-681861 | Acharya, Athul K     | (2.00)      |
|            | <b>Privately Retained</b> Simon, Kelly Kathryn |                       |                      |             |
|            | Total Financial Assessment                     |                       |                      | 3.00        |
|            | Total Payments and Credits                     |                       |                      | 3.00        |
|            | <b>Balance Due as of 06/06/2022</b>            |                       |                      | <b>0.00</b> |
| 02/28/2022 | Transaction Assessment                         |                       |                      | 3.00        |
| 02/28/2022 | Phone Payment                                  | Receipt # 2022-124782 | Simon, Kelly Kathryn | (3.00)      |

## CERTIFICATE OF COMPLIANCE

Brief length:

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(1)(b)(ii) and (2) the word-count of this brief (as described in ORAP 5.05(1)(a)) is 9,891 words.

Type size:

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(3)(b)(ii).

/s/ Shenoa Payne  
Shenoa Payne, OSB No. 084392

**CERTIFICATE OF SERVICE AND FILING**

I hereby certify that I filed the foregoing **APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD** by Electronic filing on July 12, 2022.

I further certify that on the same date, I served the same document on the following lawyer(s) by electronic service:

Daniel E. Thenell, OSB No. 971655  
Emerson Lenon, OSB No. 123728  
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Portland, Oregon 97223  
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*/s/ Shenoa Payne* \_\_\_\_\_  
Shenoa Payne, OSB No. 084392